In the Name of Allah,
the Beneficient, the Merciful

وَمَنْ لَّمْ يَحْكُمْ بِمَا أَنْزَلَ اللّٰهُ

فَأُولٰئِكَ هُمُ الظّٰلِمُوْنَ

(۵-۴۵)

" Those who donot make decisions in accordance with that revealed by Allah are in fact the unjust " (Qr. 5 - 45)

IMPLEMENTATION OF SHARIAH LAW IN PAKISTAN

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UNDER THE SUPERVISION OF
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CERTIFICATE

Certified that **MUHAMMAD NAZEER AKHTAR S/O. LATE ABDUL KARIM** has carried out research on the topic "Implementation of Shariah Law in Pakistan" under my supervision. His work is original and distinct and his dissertation is worth of presentation to the University of Karachi for award of the degree of Doctor of Philosophy in Islamic Studies.

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Dated : SEPT.11.1999

PAGE

of Pakistan. should run the Government under the principles of Islamic teachings and injunctions of Holy Quran & Sunnah.

To act against the tenets of Holy quran is to go against and nullify the commandments of Almighty Allah, which is a sin committed by Muslim and is punishable.

وَمَنْ لَمْ يَحْكُمْ بِمَا أَنْزَلَ اللّٰهُ فَاُولٰئِكَ هُمُ الظّٰلِمُوْنَ ۝

(Those who donot make decisions in accordance with that revealed by Allah are in fact the unjust).

I am inquisitive to know the cause of delay in the matter and like to go in for research work and survey just to find out who is to be blamed. I am also desirous to meet those parties who will participate in framing such Law, such as experts of Islamic Law, Religious Scholars intellectual, jurists and Government Body and would like to know the facts of delay in the promulgation of divine Law in Pakistan.

In order to find out its solution, I did a thorough research work by meeting the different group of peoples and collected the information as discussed here under:-

ɔter-1 To stress upon the importance of Shariah Law and its implementation in an Islamic state I discussed in the first Chapter the <u>concept</u> of <u>God</u>, and the relationship of <u>MAN AND GOD</u> the Salient features of <u>SOVEREIGNTY OF GOD</u> the man and his religion Islam and the <u>importance</u> of <u>Shariah Law in Islam.</u>

This will give us the definite idea to understand the factors under which the implementation of Shariah Law in a Islamic State in unavoidable, and if ignored by the Muslim Ummah, they shall be liable to committing a sin and are punishable as commanded in the Holy Quran.

MAN AND GOD' By virtue of possessing a self, a man can in his humble capacity work together with God in the carrying out of divine plan. The Quran earnestly appeals to the man to work with God in

DIN AND MAN Din Leads man to the realization that he can develop his potentialities only by Cooperating with his fellowmen, in attainment of common ends. Inthis way it plays a vital part in the development of customs and Law and institution.

SOVEREIGNTY OF GOD; While explaining the Sovereignty of God, it is inherent in the very conception of Sovereignty that the authority of the Sovereign power should neither be limited by any power other than its own free will, nor bound by any Law imposed from outside. If society acknowledges that the injuctions of God and his messengers are above question and neither its executive can issue any order nor its legislative pass any Law, for its judiciary can give verdict except in accordance with the Shariah, it means that it has surrendered its claim to Sovereignty in favour of God and His messenger.

The term used by the Quran for the agency is " KHILLAFAT" which means that such an agency is not Sovereign in its self but it is vicegerent of the Dejure and Defacto Sovereign, God Almighty.

The Sovereignty of God could be established on the earth through the believers of God as a Muslim Community, who could be called " TRUSTEES" as Communicated in Holy Quran.

The western concept of Sovereignty as mentioned in this thesis also established the same fact as stated here above.

DEFINITION AND IMPORTANCE OF SHARIAH LAW. By defining Shariah and its implementation in a Islamic country like Pakistan, one must have the little but some knowledge as to what is Shariah Law and why it is essential to be enforced in a Islamic state, which is defined as, the term Shariah means a complete code of faith and practice I.E. of "AQA-ID) and

"TASAWWUF" of internal manifestations. Fiqa includes a wide area of operation such as Mu-AMLAT, Hadood, Tazirat or Uqubat, Janayat, Siyar, administration, procedure and practice in judicial matters and other relations in law. Another definition of Shariah means, " The clear path to be followed" technically stands for the Law of guidance for the regulation of life in the best interest of man or Shariah means the canon of Law of Islam. The author of this Law is Allah.

While discussing its importance, we admit, Shariah is divine Law in the sense that it is concrete embodiment of the Divine will according to which man should live in both his private and social life. It is the Law according to which God wants a Muslim to live. It encompasses every phase of life, Shariah contains all the principles to correct and cure the social diseases of the Islamic World, as very aptly expressed by Dr. Ahmed Zaki Yamani " By living according to Shariah man places his whole existence at the Mercy of God".

According to Professor Sayyed Hussain Nasr, the word Shariah is derived etymologically from the root meaning "ROAD" it is road that leads to God.

Similarly Joseph schacht writes, "Islam in general and Islamic Law in particular is a system of duties, a command which is typical of the ethical attitude of Quran towards legal matters. Schacht calls the Shariah the core and kernal of Islam itself.

Imam Ghazali contended that the very objective of Shariah is to promote the welfare of the people which lies in safe-guarding their faith , their intellect, their prosperity and their property.

The Holy Quran contains all the principles necessary to regulate human conduct and for the development of human

mentation in Islamic State, whether Shariah effects the rights of certain section of society, what is islamisation and law and the concept of Islamic State, have been discussed also.

SUPERIORITY OF SHARIAH LAW.

Regarding superiority of Shariah Law over man made law, it is Historical remark that the proposition of Shriah has guided the system of contemporary world from the very stages of its formation for the welfare of Man. It should be kept in mind, Nevertheless that the conceptions of the sacred principles vitally different in original from man made systems. The former are divine while the later are manufactured or selfishly empirical.

The former are given by God Who is just and Who establishes justice and right, while the later are made by those who believe and act on the ideology that. " This is better than that or because it is given by a positive group temporaril opportunist".

However for the purpose of proving the Shariah, we point out, that man made laws are unable to satisfy human needs and are always subject to amendments and are modified from time to time according to the changes in the Man's Social life.

The principles of Shariah of Islam, which include also the laws needed for society, inspite of changes in the social set-up on the one hand remain perennial and fixed, they cover every kind of change which may come about in the

USE OF FORCE FOR IMPLEMENTATION!

Regarding its use of force for its implementation, it is clarified by Holy Quran that "We sent our messengers with clear arguments and with these our laws and the criterion of justice, so that man may establish himself in justice and with it We have also created steel wherein is mighty power and many other uses for mankind." (AL HADEED) (Q-57;25).

In other words law which is not backed by force is no more than a pious advice, Law must be enforced if social order is to be maintained. The Quran, therefore, is in favour of the State maintaining sufficient power to enforce its law.

The Mere enactment of good laws, the Quran Asserts, is not enough to ensure peace in the world. It is necessary that the laws should be properly enforced.

WHETHER IT AFFECTS THE RIGHTS OF OTHERS!

Whether Shariah Law affects the rights of certain society or not is elaborated here. Islam grants equal status to woman with man in her moral and spiritual stature, says the Holy Quran:-

"The believers men and women are protection one of the other" They enjoin what is right and forbid what is wrong (Evil) (IX' 71(This is to be ensured that the woman is not at the mercy of man.

According to the divine proclamation the entire mankind irrespective of its religion race, cast or creed has been created God's agents and inheritors of the earth.

Coming to the enslavement ofthe minorities as alleged by certain class of people, let it be pointed out that nothing would be more alien to an Islamic way of life and thought, than to enslave any part of the humanity whatever be the

of the slaves.

The Jizia Tax was imposed on the members of these vanquished rebels but only on those who were ablebodied and were fit to serve in the military, but were not required to serve in it. The tax proceeds were spent on the protection of the life and property of those vanquished rebels. The women and children were exempt from it. Similarly the old, the disabled and those having no ability to pay were also exempt.

In the matter of protection of life, no discrimation was allowed between the protection of Muslim and Protection of a Dhimmi. If a muslim killing a Dhimmi, he was awarded the same panelty of Qisas (Death) as prescribed for Muslims.

Those non-Muslims who were already living in the land when they came under Islam as a result of treaty, they were granted full rights and were not required to pay Jizia.

There is a widespread misunderstanding that a non-Muslim in a Islamic State cannot fully participate in the affiars of the Government but non-Muslims have been taking part in Jihad (The Holy Crusades) and allowed their share in the war booty.

In the matter of recruitment to important and senstive position in the Islamic administration only two condition have to be satisfied which are Universally followed in all the modern secular state today, namely that the candidate should on merit be found fit to hold the post and that he be loyal to the Islamic regime.

TER II In the second chapter the concept of Islamic state is discussed in order to know what Islamic State means and how important it is to establish it under the divine law in a territory where muslim Ummah lives. In fact the word "Islam" itself Means" Submission to God" and clarifies the notion of severeignty in the Shariah Law. And the State is a concrete entity in which the Ummah Attains righteousness. It means that the state is one where the Ummah achieves the dominance. It shows the state does not come into existence as an end in itself but takes shape only as a means for the righteous people to administer it on the basis of Righteousness. The Government being representa--ive of the Ummah, it is administereed on behalf of Allah by principles of Righteousness.

On the basis of the Quranic Injunctions " And those who donot rule in accordance with what is revealed by God are disbelievers". (1) . In my research work (Chaper 2) I tried to establish that how much important and essential is the implementation of Shariah Law in an Islamic State by quoting the verses of the Holy Quran from different chapters which lay an emphasis on that Muslim State do not follow it and do not give justice in accordance with the law given to them are "FASIKOON" AND " ZALIMIN".

Pakistan being an Islamic State as mentioned in the constitution of the country could not so far promulgate the Islamic Law due to the difference of opinions in the Political parties, Bureaucrates who are holding the reigns of Government and who are the actual power and authority behind the State Rule.

In order to find cut the causes of controversies , I have quoted the opinions of the parties in favour of enforcement of Shariah Law in Pakistan and also the opinions of those who are against its promulgation with reference to its printed matter in different Newspapers of the country.(Since July,1988 Todate)

ORDINANCE & USHER ORDINANCE and some others (Six in numbers) but unfortunately none of these laws were implemented. The Nation remained hopeful of its implementation till today, but nothing concrete has come out so far. To add fuel to the fire, the Pakistan People's Party, Jamiat-e-Ulema -Islam, Jamiat-e-Ahle-Hadith, Jamat-e-Islami, Lahore High Court Bar Association, Tehrik Nifaz-e -Fiqh-I-Jafria, Joint action Committee of Political and Non-Political Group (13 in number) and certain jurists showed adverse attitude for implementation of Shariah Law, This attitude of the parties could be witnessed as quoted by me from "Dawn" from July, 1988 to December 1990.

Chapter 4. In Chapter 4 are the opinions of the parties, I interviewed who gave their views as to why the Shariah Law was not implemented so far in Pakistan and who could be held responsible for this delay. The parties, I interviewed were the Government of Pakistan Law enforcing Agency's representatives, different political parties representatives, religious heads, jurists and legal experts and public representatives. With the exception of Government representatives the rest of the parties were very open in their views recorded by me and they unanimously established that Government of Pakistan, who so ever held the reigns of power since the birth of Pakistan were responsible for non implimentation in Pakistan because of the vested interest of the Members of the Government.

in the last the Chapter-6 is the "CONCLUSION" arrived at.

Before closing, I would like to extend my feelings of Thanks and gratitude to my respectful Professor, Dean of the Faculty of Islamic Learning's Dr.Abdul Rasheed and Dr. Noor Ahmed Shahtaz under whose kind encouragement and valued guidance, I have been able to prepare this Thesis, which I hope will be of some interest to my esteemed readers.

I also pay them my gratitude as my Directors of Research who extended to me their personal attention in the preparation and compilation of this Thesis.

My thanks are also due to university Professors for their timely instructions and guidance and to the Liberian of Karachi University, British Council Liberary, U.S.A. Lib-rary and Liaquat Liberary of Karachi, for providing me with relevant books and reading material in connection with the preparation of Thesis.

(M. NAZEER AKHTAR)

PAGES

According to the jews, God is a faithful husband and according to Christian, He is kind Father. The believers of both these religions treat God in term of human being. Therefore at least to my mind this argument of "faithful husband" and kind "father" does not seem to be very convincing. The Christian declared Jesus Christ as the son of God, the jews declared Hazrat Uzair as the son of God, and over all this, the angels as the daughters of God. This idea is more irrational than ISLAM, as sexual position is attributed to God who begets sons, (Jesus and Hazrat Uzair).

A Christian sect included Hazrat Mariam (Mary) also in Godhood and she was taken to be mother of God (How Strange!)

(1) " Neither he begets one nor is He begotton " Sura Ikhlas

(2) " Surely have they disbelieved, Who say that God,
" He is the Messiah, Son of Marry " (1)

Islam has put forward a most Comprehensive and perfect principle of Unity of God and describe the attributes of God. He is One and none shares, His authority, none is worthy of worship except Him, who has always been alone and will always remain alone. The highest concept of God is LA-ILA-HA IL-LALLAH

Thus we see that conception of God is very clear in Islam.

Islam on its past has presented a concept of God entirely at variance with the One advanced by the various religions of the world. Along with Iman in God the distinguishing feature of the Islamic concept lies in the belief that God did not merely create the Universe, but also laid down definite laws to regulate the scope and functions of the various objects comprising it. The law of cause and Effect and the " Law of Uniformity in nature " among other being of basic Importance and they deal with external nature of the Universe. He has, besides prescribed definite laws regulating human life and its activities.

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(1) QURAN ALMAIDA-(5-17)

the Rusul and conveyed by them as Messengers of God to mankind. It is this wherein Islam as a " Din " also distinguishes itself from the Material concept of life which takes no congnisance of the Divine guidance by means of revelation.

Belief in God is the life blood of religion. Question relating to God have naturally engaged the attention of the advocates and opponents of religion. What is God and how do we know him are questions which no Serious student of religion Can brush aside? Adequate and satisfactory answer to these basic questions will enable us to understand the nature of God and assess the value of religion. In fact we find that these questions too have received different and conflicting answers. It may be of interest to note that even the questions themselves have been phrased according to the point of view of each writer. Those who employ the positivist approach have put the question in the from of " How did the idea of God take its rise in the human mind ? " Grant Allen and I.G. Frazer are fair representatives of this group of writers. Their answer may be summerised thus :-

Primitive man lived in constant dread of the violent forces of nature which threatened him with physical injury and even death. Storms, thunderbolt earthquakes and other cataclasms of nature frightened and overawed him and as animistic tendencies dominated his mind. He personified the forces of nature and sought to placate them by offering them worship and sacrifice. He thus peopled the world with gods. Later on, as man's mind developed, he found necessary to rationlise his old attachment to them. The urge of Unification led him to reduce the multiplicity of gods to one supreme diety. He formed an abstract idea of the Absolute and then driven by unconscious emotional urges, objectified that idea. The God thus evolved is a subjective God. In the words of SHEEN, " the only God attained by a purely affective approach is a subjective God born of ones own feeling.".

This in brief, is the revolutionary theory which purports to give an account of the origin and development of the idea of one God. It is presumed that the idea of God is found only in the higher religions of the modern man and that it was alien to the mind of primitive people.

have advocated the view that primitive man's mind too was gifted with the awareness of God. According to professor Toynbee this view is put forward by Father Schmidt, who based his theory on observations made by him of "Common elements in the religious of the most primitive surviving peoples, now scattered in holes and corners at opposite extremities of the inhabited surface of the Earth. The present writer cannot say how the scholars who are working in this field have reacted to this theory. If they regard it as, atleast, worthy of serious considerations, it would mean that a different approach to the question, "What is God.?" is possible. If God's existance was recognised even by the most primitive people, it may be safely argued that the idea of God has geniune reference to the Real, However imperfectly and inadequately it may represent the real. Religion too as a means of contecting the Real, therefore become validated. Instead of being the expression of subjective wishes, religion is seen to be a transaction with objective Reality. The goal of religion, from this standpoint is not a phantom of imagination but reality itself. The point being important, we should bear in mind its implications which we have to consider later on. For the moment it should suffice to remark that in this context the idea of objective reality and belief, in a being who exists independently of us - a being who is both imminent and transcendent is a dim reminiscence of the original Din.

"Islam a challenge to religion" - G.A. Parwaiz Lahore -Adara-E-Taluh-e-Islam 1986 Page - 46-47

cooperation of other beings which have essentially the same nature at its own. The self therefore, seeks out other selves and prospers in their company. It yearns to be in the midst of beings with whom it can communicate and whose aspirations and activities it can participate. For this reason man nowhere leads a solitary life, but is everywhere found to be a member of a social group. Only in society can man enjoy mental health and function effeciently.

But, above all things, the self longs for cooperation i.e. being a coworker, with Supreme self or God. Such cooperation sustains and vivifies it. Without this the self droops, languishes loses the zest for life and activity. It is happy only when it is engaged in purposive action and happiest when it has the feeling of participation in the cosmic purpose. A compelling urge in the self impels it to seek the meaning of life and the world. The physical world on the face of it is purposeless and meaningless. Iman makes life and the world meaningful. For this reason the self clings passionately and tenaciously to the belief in the supreme being, the most perfect and ideal self.

The idea of God that the Quran presents is both simple and sublime. God is the creative force which is at work - throughout the universe. God manifests - Himself in the visible world of nature. The Quran says "Whither so ever you turn, you look at the counteness of God" (2:115). The Quran calls upon us to reflect and ponder over the grand natural phenomena — the earth and sky. Wind and rain, sun, moon and stars, All nature reflects the beauty and glory of God. Special attention is drawn is God's attribute of Rububiyah according to which he sustains and fosters every being, and thus the lowliest organism develops and attains maturity relative perfections. Because God controls and Governs the world, the world process is not purposeless and meaningless. God guides and directs the cosmic process to a grand destiny. In human history a Divine plan is being worked out, slowly and surely and a splendid destiny awaits man. In the Quran, God is presented as both imminent and transcendent. He works in the world as a creative urge and also exists outside it as its ground. He manifests himself in nature and yet transcends it. He is eternal and yet in the changing world every day a new phase of his glory is presented to our view.

insuperable obstacle to fruitful cooperation between them. Man is endowed with the self, and we have seen that a self can cooperate only with another self.

By virtue of possesing a self, a man can, in his humble capacity, work together with God in the carrying out of the Divine plan. A man has a stake in the future of the world and as a free self has the capacity to determine, however slightly, what that future is to be. It gives man a new sense of dignity to feel that, he is actively contributing to the success of the Divine plan. The Quran earnestly appeals to man to work with God in bringing about a world in which justice goodness are not merely ideas but realities. He can and should contribute to the sum total of goodness in the Universe. Man's inquistive instincts make him selfish and greedy, and bring him into conflicts with his fellow beings. As such he cannot fit into the Divine Scheme. However, by encouraging and fostering his creative instincts, which enables him to create values, he will be able to work in harmony with moral order of the Universe and will move steadily towards the goal of full self realisation and perfection. At the same time, he will be enriching the world with values and making it a fit abode for men, who are both free and good. He will be taking his modest share in accomlishing the Divine purpose. The Quran calls upon man to cooperate with other man in the persuit of the good. "Help one another in Birr and Taqwa", says the Quran (5:2).

Evolution proceeded at an extremly slow pace in the past ages, and, after, a million years passed before a higher quality emergd in the animal world. With the emergence of a free conscious self, the prospect is much brighter. When free man, under the guidance of God, are paricipating in the world process and delibrately furthering it, the pace of evolution is sure to be acclerated. By following the right path which the Quran has shown us clearly, we can develop all our latent potentialities and march forward to the ultimate good of perfection.

As man owns a self, he has a natural affinity with God, the absolute self. The affinity confers on him the right and lays on him the duty of working in harmony with the will and the purpose of God. By working in this was man not only realises himself but also gives an impetus to the progress of human society.

evokes feeling of awe, reverence and admiration in man. As man naturally imitates what he admires, he strives to develope himself and be as like God, as is possible for a finite being to be. God serves as a model and also as an objective standard with which man can compare himself and judge his progress in self realisation. Man needs God as a co-worker and as an ideal.

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ii - Islam a Challenge to Religion - G.A. Parwaiz.
Lahore-Adara-E-Taluh-e-Islam - 1986

insight into the nature and function of Din. However, it would be advisable to consider its role in human life. The primary function of Din is the development of human personality. It determines man's outlook on life and makes life meaningful to him. It aims at the transformation of man's character by organising his desires into a harmonious system of living. It eleminates the sources of internal conflict and enables man to live at peace with himself and at peace with his environments. Success and happiness are basically the fruits of a genuine personal conviction. But Din have its social side as well. It is concerned with man as he exists in a net work of social relationship. It does not isolate man from his social setting, rather, it brings him closer to his fellow-beings. It has a meaning for a man as individual, but it has a far richer meaning for him as a member of a social group. Din leads man to the realisation that he can develop his potentialities only by cooperating with his fellow men in the attainment of common ends. In this way it plays a vital part in the development of customs, laws and institution. It is therefore the proper subject of study not only for the psychologist but also forthe historian and the sociologist. All are equally bound to take it seriously and are not justified in explaining it away (as in the case of religion) as an illusion or a matter of mere personal concern. The philosopher, too, has the right to examine the validity of " Din's " view of reality and to assessIts values as a cohisive force in society. Din has nothing to fear from the impartial enquiry. It has survived the fierest onslaughts of the science and philosophy sofar directed against it.

Iqbal has rightly observed: " Higher religion recognized the necessity of (Concrete) experience as its foundation long before science learnt to do so ". He has also drawn attention to the central position of Din in a synthesis of all the data of human experience. In this connection it should be noted that the response of Din to reality is not a partial one. It is not merely cognitive as it is in the case of science and philosophy, nor is it merely emotional as it is in aesthetics. It is a total response involving all the elements in the personality of the individuals. Further it is the response of a coherent harmonious personality, a personality organized on the basis of a synthetic principle. In the world of Iqbal, " Religion is neither mere thought, nor mere feeling, nor mere action; it is an expression of the whole man ". We must not lose sight of this fact, if we want to understand the real nature of Din.

action or of thought, must some how be related to his Din or, in other words, to his basic beliefs about his relations to the ultimate reality. These beliefs essentially relate to Din. We see then that Din has given the impetus to the noblest enterprises of man. It is generally claimed that a scientific ideology car very well achieve this object. But this is not true for the simplereasons that a scientific or materialistic ideology, by Its very nature, cannot satisfy the whole man. It may appeal to his reason or interest but will, certainly remain unrelated to other elements in his personality, and will in effect lead to the fragmentation of personality itself. Science and art bring satisfaction to the rational and the emotional (aesthetic) sides of human nature respectively. But Din sets out to build up a view of the world which will satisfy all the deepest longing of man. Can Din really accomplish this stupendous task?. Some great thinkers of the modern age who confuse Din with religion have posed this question, and stoutly maintained that it cannot do so. They point out that in the past the fruits of religion have been not peace and harmony but strife and discord. Cassirer's criticism of religion deserves to be quoted in full :

" Religion remains a riddle not only theoretical but also in an ethical sense. It is fraught with theoretical autinomics and with ethical contradictions. It promises us a communion with nature, with men, with supernatural powers and the gods themselves. Yet its effect is the very opposite. In its concrete appearance, it becomes the source of the most profound dissensions and fanatic struggles among men. Religion claims to be in possession of an absolute truth, but its history is a history of errors and heresies. It gives us the promise and prospect of the trancendent far beyond the limit of our human experience - and it remains human, all too human ".

It is certainly a devastating criticism and it has been made by the leading thinker of present age, it deserves our serious consideration. To examine it, point by point will take us for afield. We can only indicate the general line of defence of Din, as distinguished from religion, should take. The difficulty with professor Cassirer is, as in the case with most of the critics of religion, that he has not studied Din as such but some particular religions, and those too which were either man - made or revealed one, though true in their origin were subsquently vitiated by human interpolations.

solves somany riddles of man and the Universe. On the other hand, it reconciles contradictions in life and harmonises the opposites in human behaviour.

It is true that religion has bred strife in the past in human society and that the religious comunities have been torn by dissensions. But that is the result of the imperfect vision of truth entertained by each contending group. Din on the other hand, breeds huminity and modesty not arrongance and presumption. Men have certainly fought among themselves in the name of religion. Their motives were political or economic masquerading as religious. But the man believing in Din is unwilling to impose his views on other. Finally, Din involves the belief in a transcedent world but it is wrong to say that this transcedent world is separate and remote from and unconnected with the world of human experience. The transcedent world of Din is only as aspect of the same reality of which the world of the senses is another aspect in fact they interpenetrate each other and belong to the same supreme reality. Din teaches us that the sensible world is an abstraction from reality and that we should adjust ourselves to the whole concrete reality and not to one of its aspects. We agree with professor Cassirer that "Religion" (Din, as we call it) is "Human, all too Human". Its function is to regulate human life in such a way that the individual develops his personality and becomes a useful member of society. In order to attain this objective, it gives what may be termed PERMANANT VALUE which no other source of knowledge can provide.

It exhorts man to conquer the forces of Nature, since the position it assigns to him in the Universe is next to God, and to utilize the power so acquired for the development of the whole of humanity. It shows him the way to rise above animal level and to live the life of Man. It is possible only if he leads his life in conformity with permanant values. There would be no permanant values if there were no Din, and if there were no permanant values, mankind will be no better than a herd of beasts. This is the real value and place of Din in human life and activity which has unfortunately escaped the notice of Professor Cassirer.

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(1)

"Whereas Sovereignty over the entire Universe belongs to Almighty Allah alone and *Unto ALLAH all things are returned* ".

In Islam God and none else is the Sovereign. The concept of God's Sovereignty over the Universe is accepted all over the world almost Universally. Islam demands that, He must also be acknowledged as the Sovereign in moral, social, cultural, economic and political spheres of life.

God is the creator of Universe. He is its sustainer and ruler. His will prevails in all around. As every body is Governed by his will, only. His command should be established and obeyed in human society. He is Sovereign and his will should be the Supreme Law.

The attributes of his Sovereignty are implied in his exellent names which are innumerable out of which 99 are famous.

There is none who is partner in his Sovereignty, not a single particle of creation can go outside his command. He alone is Almighty, all are dependent and He alone is self sufficing. He possesses all the attributes of Godness glory and perfection.

This shows that the Sovereignty of God is absolute, all comprehensive, permanant, indivisible, inalienable and original. The Sovereignty of God was explained by the Prophet YOSUF to his fellow prisoners in the most eloquent Form as under :-

"Verily I have abandoned the creed of People who believe not in ALLAH and disbelievers in the Hereafter. And I have followed the religion of my forefathers 'O' my fellow prisoners ALLAH is the one, the Sovereign. Those whom you worship besides Him are fathers. God has revealed no sanction for them. The Authority rests with God alone, who has commanded you to obey none save Him. This is the right religion but most men know not. (Al-Quran-12; 37-40).

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(1) QURAN AL-E-IMRAN (109)

According to the Encyclopaedia Britannica, the Hindu view is that He having performed his ligitimate part in the evolution by His original creation of the Universe has retired into the background. The Philosophy of modern political thought is also based on similar misconception.

The creator has not severed his connection with the Universe after having created it. He still controls its every aspect. ALL AUTHORITY AND ALL POWERS Rest in His hands. Quran demolished the foundation of Polytheism atheism and self worship.

If a man does not accept God as the creator as well as the Governor and thinks that God has severed His connection with the Universe and has no practical say in its running now, the natural consequence of his concept would be either the arrogance of all authority of man to himself or the acknowledgement of other power.

The Quran has totally banished both the possibilities, whoever claim partial or total - Sovereignty, wether for himself or for any group or orgnisation is working under delusion.

The only reasonable course for man is to acknowledge the creator and the LORD as Deity and object of worship and as the only Sovereign, Ruler and the KING in the political and social meanings of it.

The point of dispute between the prophets and the non believers has always been that the prophets demanded absolute, Complete and exclusive submission to the Sovereignty of God in the social, political, cultural and all other fields, But those in Power refused to forego their authority and acknowlege only that of God.

The Pharoah claimed godhood in the sense of political Sovereignty. He never meant that he was the creator of heavens and the earth. He could not also mean that he was the only object of worship, for the Egyptians - worshipped a host of dieties and Pharoah himself worshipped many a god and owed his exalted position to his being regarded as the descendant of the Sun god.

He simply wanted to be obeyed as the Sovereign King of the people of Egypt. His position was just similar to that of the states which claim

In ISLAM the dejure Sovereignty vest exclusively in God, who enjoys the Sovereign prepogative over all creations. The Quran unequivocally condems the Omision and deviations from the fundamantal tenets. It says :

(1) وَمَنْ لَّمْ يَحْكُمْ بِمَآ اَنْزَلَ اللّٰهُ فَاُولٰٓئِكَ هُمُ الظّٰلِمُوْنَ ۔

1. And those who do not make their decisions in accordance with that revealed by God are in fact the UNJUST

(2) اِنِ الْحُكْمُ اِلَّا لِلّٰهِ ۭ اَمَرَ اَلَّا تَعْبُدُوْٓا اِلَّآ اِيَّاهُ ۭ ذٰلِكَ الدِّيْنُ الْقَيِّمُ ۔

2. The command is for none but God. He has commanded that you obey none but Him. That is the right Path.

(3) اِتَّبِعُوْا مَآ اُنْزِلَ اِلَيْكُمْ مِّنْ رَّبِّكُمْ وَلَا تَتَّبِعُوْا مِنْ دُوْنِهٖٓ اَوْلِيَاۗءَ ط

3. Follow the revelation sent unto you from your Lord and not follow the (So-called) guardians other than Him

(4) اَمْ لَهُمْ شُرَكٰۗؤُا شَرَعُوْا لَهُمْ مِّنَ الدِّيْنِ مَا لَمْ يَاْذَنْۢ بِهِ اللّٰهُ ط

4. Have they got the associates who legislate for them what has not been revealed by God.

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(1) QURAN-ALMAIDA 5:45

(2) QURAN YOUSUF 12:40

(3) QURAN AL AARAF 7:3

(4) QURAN ASHORA 42"21

of God. As such they are entitled to the unqualified obedience by those who accept God as their Sovereign. They are the true agencies through whom the directives of the Almighty are communicated to man-kind:

a)

(1) يٰٓاَيُّهَا الَّذِيْنَ اٰمَنُوْٓا اَطِيْعُوا اللّٰهَ وَاَطِيْعُوا الرَّسُوْلَ ط

b) And take whatsoever the Massenger gives you and obstain from whatsoever he forbids.

(2) وَمَآ اٰتٰىكُمُ الرَّسُوْلُ فَخُذُوْهُ ۚ وَمَا نَهٰىكُمْ عَنْهُ فَانْتَهُوْا ط

THE ROLE OF KHILAFAT :

" The institution of Government".

It is inherent in the very conception of Sovereignty that the authority of the Sovereign power should niether be limited by any power other than its own free will, nor bound by any law imposed from outside. If society acknowledges that the injunctions of God and His Messenger are above question and neither its executive can issue any order nor its legislative can pass any law, nor its judiciary can give verdict accept in accordance with the Shariah. It means that it has surrendered its claim to Sovereignty in favour of God and His Messenger.

The term used by the Quran for this agency is "KHILAFAT" which means that such an agency is not Sovereign in itself but is the vicegerent of the dejure and defacto Sovereign, God Almighty.

After being endowed with the privilige of Khilafat, the object before the muslim community is to establish the Sovereignty of God and eradicate the other so called Sovereignties.

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(1) QURAN AN-NISA (4:59)

(2) QURAN AL-HASHAR (59:7)

As thev all pretend to impose limitatons on all the comprehensive sovereignty of God and make room for themselves. **This is a crime** which cannot be permitted **in the Kingdom of God** - the whole Universe. The only good laws are the laws of God and all the rest are bad laws. The Muslim community is under the obligation to enforce good laws and prohibit bad laws. The Quran says; "You are the best people raised for mankind. You enforce the good and forbid the wrong". (1) .

The Sovereignty of God could be established on earth through the Believers in God as a Muslim community who could be called the **Trustees.** The guiding principles of this trust have been communicated in Quran verses :-

"Surely, Allah does command you to make over trusts to those, worthy of them and when you judge between people, you judge with execellence, surely ALLAH is seeing and hearing. (2) .

The concept of trust (Amanat) covers the principle that the offices should go only to the really deserving.

The implication and meanings of the verse may state the principles of state craft contained therein :-

1. Contractual relation exists between the muslim community and the bodyof the Government. The community is the maker of the trust. The men in authority are the trustees. The Government offices are the trust and establishment of the exclusive Sovereignty of God is the object of the trust.

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(1) QURAN AL-E-IMRAN (3:110)

(2) QURAN AN-NISA (5:58)

2. All properties, treasuries and office of the state are held purely as trusts by the men in authority, who do not possess the right of onwership and right to operate them and despose them off in any way they like, but are duty bound to act according to law.

3. The men in authority being the trustees cannot utilise the authority entrusted to them arbitrarily. They must **submit to the will of God** i.e. Shariah. The complete rule of law must be ensured in the Islamic State.

4. The authority is entrusted to the heads of the Government only for the reason that are the most competent persons to deliver the goods.

5. This status of trusteeship is given to them only because of their competance. This is not their personal right which may be transferable to their legal heirs after their death.

Men come and go but the institution of trust remains. With the demise of one trustee, The contract between him and the community comes to an end. A new contract (bay'ah) will be entered into and the next bestman will be entrusted with the job.

Government.

6. The establishment of this trust is not an end itself, it is merely a means. The real objective is the establishment of the exclusive **Sovereignty of God.**

There is no harm in discussing the western concept of Sovereignty in order to establish the Sovereignty of God. I therefore bring before you the following facts.

The western concept of Sovereignty.

The issue of sovereignty has become so vexed and disputed that many thinkers have even pleaded that the problem is so confusing that it would be better if the political theories discard it altogether. Internationalism seems to have more or less rendered the concept of national Sovereignty obsolete. The political philosophers have tried to place the cap of sovereignty on man, a being for whom it was never intended and whom it can never fit.

John Bodin is said to be the first to give an analysis of Sovereignty. During his period (1530-1596) France was a scene of religious wars, he wanted to see unity established under a strong monarch who should be Sovereign.

Sovereignty to him is the supreme power over citizens and subject restrained by law.

the prevailing anarchy throughout the country. Hobbes does not believe in God and speaks of God and his prophets sarcastically.

John Locke : Theory of Sovereignty "-John Locke (1632-1704) has been regarded as the philosopher of constitutional or parliamentry government and whose book on "Civil government" has been called a gun with two barrels, one directed against Hobbes absolute despotism and the other against Robbert Filmer's theory of the Divine Rights of Kings.

The doctrine of Divine hereditary right and absolute royal power was negatived once and for ever by the revolution and the rule of parliamentry was definitely established.

This state of affairs forced the men to transfer their individual power to the community at large. By this social contract among themselves a state was created. The whole community become the repository of the Sovereign power of the state. A Governmental contract is implied for legislation and administration.

It is made clear to the Governmental and legislative authority that it is to carry out this work only as a Trust on behalf of the people. Thus locks has given Sovereignty to the community at large and authority to rule is given to the Government as a Trust.

At one place supreme power of the people, at another he says, Power vests in the legislature. In the case of ISLAM. The term of Trust are the well defined norms of the Shariah. The violation of the Shariah decides that the ruling authority has exceeded its jurisdiction. He does not use the word "Sovereign" either for the monarch, the legislature or the people.

Sovereign. He suggests the majesty of Natural Law is to perform this function. The ultimate control, therefore is given by Locke neither to legislature nor to the community behind it, but to a system of natural law upholding natural rights. The **Law of Nature** is nothing but **the Law of God.**

Whenever he talks of the Law of Nature or the Law of God, he does so in the sense of Sovereignty of Law being the **will of God.** His Sovereignty of law is just like the Sovereignty of the **Shariah in Islam.**

Rousseau's Theory of Sovereignty.

Locke was not, strictly a democrat, he was an aristocrat, If Hobbes stood for the Sovereignty of one man, Locke stood for the supermacy of a few. He did not stand for the direct and active participation of the people as Rousseau did. Rousseau therefore stood for the Sovereignty of the people in the real sence.

Rousseau unites the absolute Sovereignty of Hobbes and the papular consent of Locke into the Philosophical doctrine of papular sovereignty. He has accomplished for the people, what Hobbes **had** done for the ruler. Attributes of Sovereignty in his democratic state are inallienable, indivisable, infallible, unlimited, Universal and absolute.

Influence of Islam on Rousseau.

A perusal of all the work of Rousseau shows, that he has evolved all is ideas under the influence of Islam.

remains. The individuals have their status and role as the members of the corporate body to which the individuals surrender their rights to property and life.

This does not mean that Government have the arbitrary and absolute power to rule. The Government can act just a trustee, whose powers have been defined by the Shariah. The sanction behind the smooth running of trust of government is the general will of the people and the Islamic concept of **Consensus of the people are** one **and** the same thing.

He is deadly opposed to Christianity and others. The Judiac Law also does not satisfy him because it is not comprehensive.

Islam - Its comprehensiveness and its glorious history absorb him. He is convinced of the truth of prophethood of Muhammad (PBUN) as that of Moses.

Towards the close of his life Rousseau was being considered by his society as a Muslim because he had strongly favoured the system of Mohammad (PBUH).

Austin : He defines the Sovereign as a determinate human suprior not in the habit of obedience to a like suprior. The search for determinate Sovereign in Britian leads us to duscussion whether Sovereignty lies in the King, the parliament or the electorate and the search of determinate Sovereign in USA involves critical discussion of the fact whether Sovereignty lies in the president, the congress of the supreme court.

Therefore, the discussior of these questions leads to confusion only, which can best solved by attributing Sovereignty to God Almighty or to the expression of His will - the SHARIAH or to the Holy Prophet being the determinate person representative of the Sovereign God.

Terminology is always relative to the culture in which it is evolved. Islam being a comprehensive ideology and permanent moral system, should throw light on this aspect of the matter. So, the Quran has prohibited the Muslims from the use of such words which are employed by the other people as terms.

Democracy is the western political concept with its own background of ideas. The Muslim should not use it for their political system.

A detailed analysis of the Islamic institution of Shariah, may, however exhibit some similarities with the western democracy.

Basic Idea

The Quran and Sunnah are the repository of the Islamic Law. The Muslims have to implement that in their affairs.

"And consult them in their affairs. Then, when you have taken a decision, put your trust in Allah". (Q.3:159)

It is narrated from "Hazrat Ali" that the word "AZAMTA" means the decisions based on consultation with the people. The Muslim have been ordered by God to proceed in their affairs by consultation, "They conduct their affairs by mutual consultation". (Q.42:38)

Hence Mutual consultation means the consultive assembly of believers, which is called SHURA in Islamic system.

must be the representative body of the Muslim Community.

Hence running of the Government by representative Shura is the Method, while election of the representative members of the Shura is the Technique.

Islam gives method and leaves the technique at the disposal of the Muslim.

On the basis of the above method and technique a head of the Islamic state is appointed who is called Caliph (vicegerent of God) having qualifications of being a staunch Muslim, and he must be a Jurist, this is a person having a deep understanding of the Shariah with sufficent knowledge of Quran and Sunnah.

But at the same time he can be impeached :-

a) If he is not fulfilling the collective obligations of the Muslim community. That is he is not struggling effectively to implement through out the world. What is lawful and what is unlawful.

b) If he disbelieves any of the fundamentals of religion.

c) If he flagrantly violates the provisions of the Shariah.

Similarly under the Sovereignity of God an Islamic State can be called a Usurper Government if in the absence of dejure government all the acts done and orders make in a Muslim community are without lawful effect as held by Khawarij and Mutazila. The working of the whole muslim society is legally suspended likewise.

On the other hand Murji maintains that the manner of comming into power is irrelevent, If the government has defecto political control, all the acts done under it are legally valid.

Any person who occupies a public office like that of a Caliph or Judge etc, In un-lawful manner is a Usurper. His holding of the office is void. People are not bound to obey his orders. The Holy Prophet (PBUH) has warned that obedience is not due to a sinful ruler.

All the Jurists of IRAQ are of the view that the lawful orders of a Usurper ruler and judge are legally effective but this does not mean that his holding of the office is valid.

ثُمَّ جَعَلْنٰكَ عَلٰى شَرِيْعَةٍ مِّنَ الْاَمْرِ فَاتَّبِعْهَا وَلَا تَتَّبِعْ اَهْوَآءَ الَّذِيْنَ لَا يَعْلَمُوْنَ [1]

(Then we put thee on the (Right) way on religion: so fallow thou that (way) And follow not the desire of those who know not) "ALJASIYAH" - 18.

The word Shariah is used in the Quran itself. The Book of Allah says in the above quoted verse.

The term Shariah means a complete code of faith and practice i.e. of "aqa-id" and "a'mal" and its first divided elements are "ilm-ul-kalam" or the secience of unity and attributes to God, Islah al-Zahir or Fiqh and "tasawwuf" of internal menifestations. Though the scope and operation of the science of self's knowlege or ilm-ul-Fiqh, originally, included all the science in the Shariah, later its meaning was restricted only to practical matters or problems. Nevertheless the science of Fiqh still contains a wide area of operation, and thus, primarily, its first division is into "Tahdhib-ul-Akhlaq", Tadbir-ul-Manzil" with Siyasat-i-Mudun relates to Munakihat (or marriages), Mu-amlat (or transactions) Hadood, and Tazirat or Uqubat (penal matters) Janayat (or torts), siyar (or international relations) Ahkam-i-Sultaniyyah (or administration) Adab al Qadi (or procedure and practice in Judical matters), Qada (or justice) and other relations in law.

The words Al-sirat-ul-Mustaqim" or straight path as used for Islam are contained in the Shariah which is al-hidayah or "the guide".

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(1) QURAN AL-JASIA (45 - 18)

by God and through the guide which leads to the goal. The former is used for the light provided by God and the latter is contained in the way provided by the Prophet of Islam. These are implied in the word Shariah or usul-ul-Shariah are thus the elements of religion or Din and hence part & parcel of the latter.

The prescriptions contained in the Shariah serve as evidence for the establishment of Shariah values, which are called Ahkam-al-Shari as the qualities determined as a result of revelations. The Shariah evidence or Adilat al-Shariah, are four in number, viz, the Quran, the Sunnah the Ijma and the Qiyas.

The science which derives the Shariah values from the Shariah evidences is called the science of Fiqh or ilm-ul-Fiqh. It is a method of deduction of the Shariah values relating to conduct from their respective particular or tafsili evidence. Since the four Shariah evidences are too general or ijmali evidences. They need a particular science as a basis to establish the Shariah values in particular cases or problems. This particular science, which prepars its premises for Fiqh in order to derive the Shariah values from shariah evidences is called usul-ul-Fiqh which may be termed also as the science of the basis of Fiqh, resting on the four Shariah evidences.
(for authorities see Quran - iv 79-80 xv9 lix-7).

Since the Quran and the Sunnah are principal sources from which the precepts of the Shariah have been drawn. The rules recognised as the principal elements of actual juris-prudence are subjects of the science of Fiqh. God the only legislator has shown the way of felicity to the people whom, He has chosen, and inorder to enable them to walk in that way, He has shown the precepts which are found partly in the enternal Quran and partly in the saying and doings of the Prophet, transmitted to prosperity by the companions and preserved in the Sunnah, called Shariah and rules thereof called Ahkam. Hukum (Pl. Ahkam) is established by communication or khitab from God and the deal with religions belief in the unity of God as Kalam and moral principles and human acts as Awamir ws Nawhi. The relation with the creator as obligations of the creatures as the rights of God are called IBADAT or Huquq Allah, i.e. the service to or right of God, and the affairs of mankind or transactions (mu'amlat)

Haquq-ul-Ibad. They cover the whole field of human life and conducts under the frame work provided by the Shariah. In the whole system of the sacred principles, God being the sole Lawgiver is the Supreme Sovereign or Hakim. The principle is simple that Hukam needs a Hakim which implies the existence of persons for whom its imposition is in existence in relation to their actions and deals. The Hakim hence is God who is All-Powerful and Malik-ul-Mulk or the Rabb-ul-Alimin and the creatures or the people on whom the hukm is imposed are called Makhum Alaihi and acts and deals are called Makhumbihi.

The principles of the Shariah imply that all commands or Ahkam being divine, they aim less for worldly prosperity and more for future reward. The features are based upon certain axiomatic, acute, intricate rules of logic - metaphysics and divinty. The body of the science of Fiqh which trenches the knowledges of various branches of human conduct in detailed application is called ilm-ul-Faru, which remains wide to incorporate each and every aspect of human life. The injunctions of Shariah uniquely and positively bind the muslim's act, his conscience and irrespective of what else and wherever he may be, the commandments of religion are always present to guide his actions and dealings. Timely considerations or self indulgence may hamper the spirit but the control of Din is always present in the faithful heart. For this reason, Islam, regulating each and every area of human life is a complete code of life.

The message of Islam as provided in the Shariah, works for the avoidance of difficulties or narrowness from human life ("see the Quran, (1) - God desired you ease and good and not hardship"), for the Quran says "God is Rahman or Rahim" (2) . Everything based on wisdom and benefit is provided for man and his social life, by God. The Quran explains the same. "we have turned about for men in this Quran every parable .(3).." as details of every day life.

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(1) QURAN AL-BAQRAH (2:185)

(2) QURAN AL-FATAH (1:1-3)

(3) BANI-ISRAIL (17:89)

"qillat-i-taklif" for mankind which is one nation. By a gradual process or tadrij a model stage for the accomplishment of the ideals given by it is clearly provided.

Everything based upon human nature is contained as a feature of justice and righteousness. God who is Adil has made mankind into an ummah who follow His guidance and abide by His ahkam. The commendments of God on the basis of the theory of what is just or the norm of Law called "ibahah" are divided into Fard or Wajib expressly commanded by the Quran or categorically commanded by triditions; Sunnah, Masnun, Mandub or Mustahab or desirable, Jaiz, or Mubah i.e. permitted, or indifferent, Makruh or reprobated and Haram or absolutely forbidden or abominable. All these show the width of the Principles of the Shariah. It not only tells what is required under penalty, but also what is recomended or disliked though without reward or penalty. In other words all human acts are permitted or indifferent unless and until some authority can be discovered in the Shariah which raises or lowers them in point of validity. Nevertheless, in case of justified excuses the strict principles of Shariah termed "azimat" provided a concession by way of equity or rukhsat and the same is well illustrated in fasting on a journey or while sick on the basis of Quran. (1)

It should be kept in mind that what has been discussed above are completely unique principles of the Islamic System - Islam is not at all "theocracy" which is from the Greek word "Theos" meaning God and which is a government or state governed by God directly or through a sacerdotal class.

Unlike the Pope who is considered a representative of God, there is nothing which could claim any material form, human or institutional, that could claim to be the representative of God.

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(1) QURAN AL-BAQRAH (2:185)

mentioned as a man (see Quran, [1] "Say I am only a mortal like you") and the Caliph is mere representative of the Prophet unlike the Papacy of Rome.

The above facts of the Shariah system lead us to another aspect of the situation. It shows that the system concerned being vitally different from other conception and having been framed upon a principle in accord with the human reason is far superior and fixed permanently for human existance. On review of the legal and political history of all systems are already a part of Shariah. Its nature provides for the same and moreover it presents in a most refined manner anything which is beneficial to mankind. We have judged and tested by comparision many of the underlying principles of man made science and have concluded impartially that the system of Shariah possesses an enternal message for mankind.

MODERN CONCEPT :

There are people who consider the Islamic Shariah is unadoptable for modern living. The reply to this is simple and lies in the plain fact that these people have not studied the Shariah as independent Observers. For a time we accept that the time factor is involved in this case, it would have been a truth that the modern laws or system of Europe (as Belgium, Lexumberg, Albania, Yugoslavia) might hence made these countries for more strong, advanced and progressive than England, America & other countries. Moreover the roots of legal systems of the advanced countries of the Contemporary world lie deep in the ancient system.

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(1) QURAN AL-KAHF (18:110)

Canada, and the United States, Germany, France, Japan and even the communist countries have adopted the ancient Roman legal system as civil law. As compared to this old - inheritence, it may be said that Islam is of recent date and even an impartial observer will acknowledge the debt owed by comtemporary systems to Islam and institutions of its Shariah.

The system of the Shariah proceeds, in addition to the preventation of blame worthiness in human conduct and action for a reform of human society for the recognition of the highest ideals of life for this world and the world hereafter. The ascepts of the life of man for betterment of his lot are given combined consideration by Islamic System. This ideal is not present in the manufactured systems which only work to prevent what is wrong or offensive. The latest method of human approach considers the contemporary rule of law unsatisfactory. The publications of recent post of international commission of Jurists, the centres of the world peace through law, the movement of democrate lawyers from France & Belgium and the legal working and international conventions for elimination of Poverty, illiteracy, nuclear treates and control upon such weapons, desire and preach to control the powers of the governments through the protection of human rights not necessarily by the rule of law but by noble ideals. In other words there is growing movement among the western nations and the nations under the orbit of influence to achieve more than what is given by their law. They endeavour to fetter governmental powers by rules and laws which would protect individual human rules. These new movements and attempt of the many humanists to establish a world federation of all human beings go to show that a man is in search of an order, a system more comprehensive, for the betterment of his breed. If we compare these new thoughts with the magnificent Shariah, it may be seen that solution of man's problems are available. It shows and proves that Shariah is not only supreme and in accordance with the needs of man; it also contains principles which are for all time and place.

Shariat which literaly means "the clear path to be followed" technically stands for the law of guidance for the regulation of life in the best interest of man. Its objective is to show the best way to man. The violation of this law amounts to sin. Shariat deals with all aspects of life of a Muslim, both religious and secular. The religious and Secular rights and duties of a man have been devided into four heads (a) the rights of God (b) the rights of individuals (c) the rights of other man and (d) the rights of all creatures.

The technical use of the term Shariat is referred to in the Holy Quran thus: "We gave thee a Shariat in religion, follow in and donot follow the lusts of those who do not know". (1)

And again :

"To every one (people) of you, we have given a Sharia and minhadj (a clear way)".

Shariat means the canon law of Islam. The author of this law is Allah and in it pervades the will of Allah. It is donative of the commandments of Allah in matter of activities of man. Shariat is the right code for the whole life of a man ordained by Allah. It is the basis for judging the action of man whether it is right or wrong.

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(1) QURAN AL-JASIA (45-18)

the religious, social political, domestic and private life of those who profess Islam. It is the knowledge of the rights and duties, whereby a man may fully conducts his life in this world and prepare himself for future life.

Shariat is a complete code of Islamic law pertaining to the rights and duties of a muslim. It governs the conduct of a man, at the same time it removes the ignorance of a man and gives him true perspective of his rights and duties. It is concerned mainly with the method of worship, social principles, laws regarding man, relation between man and man, the rules and conditions regarding the clean and unclean, the lawful and unlawful and similar other problems.

- An introduction to Islamic Ideology - Anwar Hashmi

Karachi-Karachi Book Centre, Karachi 1963 Page-134

Islam developed a comprehensive law that covers the whole span of human life, and this comprehensiveness flowed from Islam's conception of human life created for the fullfilment of imperatives constituting the Divine will. All acts, therefore, are seen as falling within the perview of Shariah. At the same time, the law of Islam acknowledges the general welfare of humanity to be its purpose.

Shariah is Divine law in the sense that it is the concrete embodiment of the Divine will according to which man should live in both his private and social life. It is the law according to which God wants a muslim to live, it encompasses every phase of human life. Shariah contains all the principles to correct and cure the social diseases of the Islamic world, as very aptly expressed by Dr. Ahmed Zaki Yamani, "By living according to Shariah man places his whole existence at the mercy of God."

According to professor Seyyed Hussein Nasr, the word Shariah is derived etymologically from the root meaning road: it is road that leads to God.

Dr. M.A. Rauf, Rector, international Islamic University, Malasia, however says that the original meaning of the word Shariah is a stream of water, as water is the source of life, so is the Shariah of Islam the source of orderly and harmonoious social life. The object of Shariah in Islam, says the Doctor is the protection and promotion of the well being of the community. Shariah is an all-embracing body for religious duties rather that a legal system.

Dr. Rauf further says that strictly speaking Shariah is not a legal system, rather it is a system of morality. It nourishes the mind of the individual with a desire to cultivate the Islamic virtues and an obhorrence of the commission of vices. It inspires the believer to seek to earn the pleasure of God which leads to rewards in Paradise through complaince and avoidance of violation.

the believer to the supreme will. It has come to mean to the basic unit of society, the individual, the attainment of inner peace within the community in which he lives, and through it, peace within the larger society. The Shariah encompasses this ideology and its purpose is to bind and through nim the community in which he lives, to conform to a particular pattern of life and social order and its preservation for the attainment of peace within and peace without Shariah provides for peace and harmony within the social unit and an optimum order free from conflicts and in consistencies.

In Islam, the embodiment of Divine will is not a set only of general teaching but of concrete ones. Not only is man told to be charitable humble or just but how to be so in particular situations of life. The Shariah contains the injunctions of Allah as applied to every day situation in life. The Shariah provides the knowledge of right and wrong and it is by his free will that man has to choose which path to follow. Shariah is more than a set of rules, it contains the whole mentality and a way of life which when fully adhered to permeates the minds, actions and feelings of a believer, It is the most typical manifestation of the Islamic way of life.

Writes Joseph Schacht, "Islam in general and Islamic law in particular, is a system of duties, a command which is typical of the ethical attitude of Quran towards legal matters. Schacht calls the Shariah the core and kernal of Islam itself.

affairs to rise to the loftiest heights or by rejecting it to sink to the lowest depth. By his right choice and good conduct man can make or mar his destiny. Shariah is the means of integrating human society. It is the way by which man is able to give religious significance to his daily life into a spiritinal centre. In their totality and all embracing nature, the injunctions of the Shariah are able to integrate man and society according to the dominating principles of Islam itself, namely Tauhid (unity of God). It is the means by which unity is realised in human life.

Imam Gazali contended that the very objective of Shariah is to promote the welfare of the people which lies in safeguarding their faith, their life, their intellect, their prosterity and their property, and that, therefore whatever ensures the safeguard of these five public interest is desirable.

The Holy Quran contains all the principles necessary to regulate human conduct, and for the development of human personality Shariah contains the whole duty of man. [1]

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[1] DAWN/24-2-89 BY M. AMINUDDIN.

Man is a social being, he is not able to live alone, like other creatures and has the need of mutual assistance and joint action. By reason of the fact that there remains the need for practicle rules of conduct under which man may live, God has provided practicle propositions of the Shariah which refer either to the matter of future life as "IBADAT" or to matters of life on this earth into different branches of civilisation. In this way God decreed the continuation of this world until the appointed time. This depends upon the perpetuation of man which depends upon his concept of the rules of conduct for his progress and welfare and for his prosperous and peaceful life, spiritually and materially, in perpetuation of civilisation.

It is historical to remark that the propositions of the Shariah have guided the systems of the contemporary world from the very stages of its formation for the welfare of man. It should be kept in mind, nevertheless that the conceptions of the sacred principles vitally differ in original from man-made systems. The former are divine while the later are manufactured or selfishly empirical. The former are given by God Who is just and Who establishes justice and right, while the later are made by those who believe and act on the ideology that "this is better than that" or because it is given by a positive group temporally apportunist.

The Shariah, containing a complete code of life through its evidences, has many principles, still to be uncovered by human sciences. The progress of man is dependent upon his imperfection and the unfolding of mysteries of the universes. The Shariah is a constant invitation , ever superior in this direction.

From the very beginning, it should be remembered that God has orgnised the system of a happy life on basis of the needs of the people. The Shariah evidences (especially - The Quran and the Sunnah) have laid down the principles for each and every area of mans life and thus, the rules and methods have been enunciated relating to "IBAD" - manner of living. "Muamalat" state affairs, etc. Let us first take up the principles which relate to matters of good and happy living, in other words, the Islamic Economic system.

The principles of economic relations have been innumerated in the Quran. At first man's living or livilihood is guaranteed by God and He has promised to provide a living for every creature. The Quran says : "Your sustenance as also that which ye are promised." (Li:21). It is elaborated: There is no moving creature on the earth but its sustenance depended on God : He knoweth the time and place of its difinite abode" (XI.6). The gift of sustenance may be different for different creatures, but in equality is not the Divine - intention, the Quran says: "God has bestowed His gifts of sustenance more freely on some of you than on others: those more favoured are not going to throw back their gifts to those whom their right hand possess so as to be equal in that respect.

Will they deny the favour of God?" (XVI:71). It means that it is the duty of those who are rich to come to the help of the needy and thus equalise the necessities of every individual. Under this principle, the State has the duty to see to the sustenance and maintenance of every one of its citizens, the poor having a special right for maintenance. The surplus properties of the richer class were distributed to the poor class during the republican period of Islam. The great Caliphs - Umer and Ali acted according to the direction of the original principles of the Quran and the Sunnah and the system of social security was for the first time adopted in human history.

in a few hands, as this ultimately paralyses the whole social fabrics, there may, however, be difference in the scale of people riches and wealth. The Quran says: 'Woe - to every kind of scandal - monger and back biters who pileth up wealth and layeth it lay" (1) Similarly, the passion for seeking increase in wealth effects, individuals, societies and nations (2) . The Book of God provides that goods and wealth should be circulated and distributed among all the classes of society. In Surah "HASHR" (3) BAQARAH (4) and at many other places, severe punishment for hoarders and monoplists is provided. Lawful, necessary and individual-cum-social spending has been regularised and the State is made to adopt the directions of the Quran. Charity and alms giving have religious sanction and the unity of the principles of FIQAH is a proof for the economy in the Shariah system. The third principle prohibits unlawful deals, interest - taking, undue and vitiated profits, unfair trade practices and similar transactions by laying down what is lawful and beneficial for individual and social interest. The Shariah provides economic principle - relating to individual earning, for what is to be earned, what tobe spent, and on what it should be spent. The rules of law and justiciability are enunciated and man is directed to act lawfull and for the welfare of other. Under social principles, he is to enter into transaction of trade and business, work and other means of earning livelihood ("See Surah BAQARAH, BANI ISRAIL, NAHL, INAM, JUMUAH, MUMINUN, ETC.").

The Shariah provides for the economy tobe based upon social principles for general mankind. The Quran says: "You are the best of peoples, evolved for mankind and enjoining what is right, forbidding, what is wrong and believing in God" (5) . For the enforcement of these principles, the institution of BAIT-AL-MAL commandment on agricultural fields, control on revenue and taxation are given.

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(1) QURAN AL-HUMAZA 104:1-3
(2) QURAN AT-TAKATHUR 102-1-2
(3) QURAN AL-HASHR 59-7
(4) QURAN AL-BAQARAH 2:177
(5) QURAN ALE IMRAN (3:110)

above comes to a practical application when examined empirically. The science of production and the distribution of wealth lays down concrete measures which are to be adopted by the state and its members. Based upon democratic principles, the state is administered under a social security system providing full and equal economic rights for all members of the society without discrimination and any bais. For the unemployed and needy, the institution of awqaf, zakat, inheritance and taxation are provided. Suppression of usury monoplies, hoarding, Smuggling and other unfair trade practices is made the underlying policy, with social control on means of production, as against individual interests. Their is the system of collective bargaining over individual profits in trade and business and equal distribution of profit - Sharing for the capitalist and the labour classes --- Individual ownership is controlled by the principle of social welfare by implementation of methods controlling the capitalist accumulation of wealth. The institutions for the welfare of general public or common man under the non-capitalist economy,discourage exploitation of other's labour. In other words the principles of the Shariah provide a kind of social solidarity. There is freedom and right to work, to own property and to enjoy other property rights. Nevertheless these principles are bound by the larger interests of the community in Islam. In fact, private ownership right in the Shariah is covered by the concept that since all property is owned by God, man is to enjoy its benefits, in other words, his title is limited to the benefits accruing on the property, but the legal title vests in God. The exercise of this right is circumscribed by the larger interests of the community and thus the principles of social solidarity prohibit exploitation under which the economic system of the Shariah exists.

In the light of what has been stated above, if a comparative survey is made of the economic system as laid by the Shariah of Islam with other systems, it will be found, that the former stands superior. Under Fascism, Nazism, the economic administration was the main prerogative of a particular group of persons, as opposed to the Islamic Social Control.

the Islamic system permits individual ownership but limits its operation by the imposition of community welfare, totally absent in other systems. This principle ensures welfare and works for general prosperity in a Islamic state. On the other hand, under other systems some people are enabled to become more and more powerful at the expense of other people, which gave birth to racialism and division among the people on the basis of geographical setting.

The economic system of Nazism and Fascism are akin to the capitalist economy under which wealth goes to a few hands and a free system of competition to its toughness. It has ultimately resulted in monoplies which have greatly harmed the general consumer. The development of the captalistic economy has also led to dependence on national loans and under the rising institution of Banking interest or usury (against which history is replete), came into operation ultimately affecting the general people and the common man. They became poorer and poorer making the rich more and more rich. All this is opposed to the Islamic principle of social solidarity which acted against accumulation of wealth in a few hands and under the principles of the Shariah provided for the general and common welfare. The Shariah laid down that state should not injure the rights of people and jurists developed rules where the state is made responsible for carrying out such actions.

The state has been urged to provide all means for the basic necessities of the worker and the common man under the prophetic direction. "If a person who is charged with work for us (i.e. the state) has no wife, he shall have one, If he has no servant, he shall have one, if he has no animal, he shall one, thus ensuring prospertiy, for all. According to a tradition the widow of Jaffar ibn Abu Talib come to the Prophet to talk to him about the orphanhood of her children. The Prophet said to her: "Why should you be worried about them, when I am responsible for them in this life and the next".

Primarily, the birth ___ of Socialism or Communism (since the two systems aim for one goal) is the result of class struggle and suppression of the common man's right. The principles of the communist economy are based upon the rule that wealth and means of production should have no individual ownership and, secondly, the society should be based upon the conception of equality and absence of any discrimination between the classes. The principles rest totally on materialistic basis, giving man's role a secondry place. It is replaced by the nation of social existence, which is based upon economic factors alone. It should be added that the economic principle of communism allegedly rests on the philosophy that human reason is just a manifestation of matter which reflects the external material environments surrounding it. This very principle is against the nature of man and his spirituality. The ideology of the Shariah negatives such narrowness of the human sphere. As against the degradation of man's status and personality the Islamic principle lift him to make him vicegerent of God on earth, with full individual and social freedom in the limits set up for his welfare. The spiritual aspect of man is given due consideration by the Islamic ideology and the economic factors are considered a part of the full beneficial operation of the nature of man. The non-economic factors of moral values which form a basis of human life for proper organisation, exertion and enthusiasm are essential for man's welfare. They are absent in the socialist economy. The communist economy rests on a complete dictatorship of the proletariate, where the state alone is the despenser of every thing. It is another form of suppression of human rigts given by Nature. The Shariah system, providing full freedom to the individual by recognising private ownership, works in the order of nature framed by God for mankind. Individual and private freedom recognised by Islam is circumscribed by the greater right of the community - The Ummah - Under the principles of social solidarity - Realising defects in the communist system, there has been a split in the MARXIAN. Philosophy to the effect that private and individual ownership has been permitted. The first stage showing the defects of man-made system on account of man's imperfection has been reached and there will come the next stage when this particular ideology will wither away and substituted by another.

The Shariah has always placed equal emphasis on the rights of the individual and right of the Ummah. The individual is an essential element in the social edifice and the general responsibility towards him is one of the basic concept of the Muslim system. There is a balance between an individual's obligations towards the community and his rights within it. All these are intended to achieve social justice. It is the main topic of contemporary human thought in the capitalist and communist ideologies.

The evils of the two are their defects can be easily removed by the Islamic economic system which is supreme over all other human ideologies.

The Prophet of Islam showed a path to mankind. The path of Universal Law - The Shariah - Which contrary to the rigid limitation of race, national frontiers, language and geographyical configuration, could be accpeted by all and by alliance with those from Rome, Paris, Abyssinia, Arabia and the rest of the World beyond that accepted that system not only chose an ideal but actually put it to practice under an obligation of debt owed to Islam.

The Shariah thus conceives of a social order as a means of discovering the signs of God and putting them to the service of humanity: it enables the people belonging to that order to show capacity for initiative and unfold the immense possibilities latent in these signs. The society conceived is called Ummah which has to set virtues as the object of its social life under the frame-work of TAQWA, that is justice and righteousness.

The above goes to show that in the Shariah, the conceptions of administration are based upon the principles that "Sovereignity" belongs to God and the state or the government is the representative of the Ummah. The community has the highiest corporate existence. The administration is to run according to the ideals provided by the evidences of sacred principles of the Shariah contained in the Quran, the Sunnah, the Ijma. They are ever based on the principles of justice, righteousness, peace and prosperity of man in accordance with the nature of man's creation. Under them are provided the rules of the politico-legal science of Islam. It shows that there is no absolutism in Din and thus neither the state nor the rules of law become a deity. The individual has his ownself - recognised, corporate and social life with due provision for his different fundamental rights and related claims through the principles of social solidarity.

The final massage came through last Prophet Muhammed (PBUH) for all mankind. It is a complete science which is not specialised for a particular period but it is meant for all periods and times. It cannot be amended or modified, ——————— for it is given by God Who is Perfect and Creator of all Universe and things. The principles laid down by the Shariah are above every man - made society and, being perennial, are adoptable for every new situation.

The modern system being the product of imperfect human mind it will be seen that they stand no comparison with Shariah of Islam. However, for the purpose of proving the Shariah's superiority, let us elaborate some points :-

Man-made laws, unable to satisfy human needs are always subject to amendment and are modified from time to time, according to the changes in man's social life.

The principles of the Shariah of Islam, which include also the laws needed for society, in spite of changes in the social setup on the one hand remain perennial and fixed, they cover every kind of change which may come about in the society.

They are also flexible, for they contain instructions for the rules of law arising in every society.

The modern systems of law, as framed by diferent societies, are for a particular social set up and in nature being transitory, do not always fully and completely satisfy human needs. The modern systems have the welfare of individual and society and their objective to which end they exert. The Shariah of Islam also has this objective in view. The modern systems, however, work only for external actions and the modern oriented laws are binding only on the external conduct of the people. As opposed to this, the Shariah works not only towards binding external human actions but also towards his internal conscience. The role of Qadi or a Judge in the islamic system is concerned with external justiciability of human actions and the Mufti has a role which is concenred with internal minifestations, man's conduct in belief, and matter relating to his conscience which are tested in accordance with the rules of the faith of Islam. The Shariah, it will be seen, has thus a wider scope of its activities, which fact speakes well for its superiority.

The principles of the law framed by the Shariah and its structure are to do complete justice in a unanimous way with unified principles. For these reasons there is no dichotomy in the law framed under the Shariah methods and ideals provided. On the basis of monotheistic nature of Islam, the Islamic nations of law, justice and society are not different. What God provided as rules of conduct is called Divine Law and what, He wanted to be based upon principles laid down by Him are just for the Divine order or society. The Shariah conceives of **One Legislator, One law and one justice** for a single society. The ideal of law are the same for complete justice in human transactions for the society of the faithful. In other words there has been a perfect harmony in the principles of Law and justice and society, As opposed to it, the Roman Law, the English Law, and all other man-made laws have dualism in their system.

The hardship in other legal systems which gave rise to another set of rules of law were due to their imperfect notions of life and its principles. It has been based upon total materialism in law and notion of their approval of their systems. It was also a result of excessive technicality of their law for which a set of rules was adopted. A third method also developed which lay in the principles of - legistation and thus a set of legistative statutes developed which provided for further reliefs. Considering these also insufficiant, the judicial approach was adopted which gave power to the judges to interpret the law, complexity and confusion was the result and adjustments were necessitated. As a consequence, structure upon structure was built in the man-made legal systems, on comparision of the history and present position of the Shariah and the manufactured systems, will be seen that the system of Shariah does not posses such dualism, confusion and choas and ultimate complexity in the human life.

On judging these complexities, the politico-legal science in the Shariah has neither a dichotomy nor a conflict in its aims - purpose and objects and a unity is visible in its ideology action and effects. The Shariah system works through secular and religious principles and has also a method of protecting individual, social and human interests. There is a perfect balance in its institutions. The Shariah having been framed upon the inherent nature of man and consitutional elements of his creation, it remains always comparatively superior to other man-made systems.

The man-made systems are operative only under a rule of enforcement by a body imposing them. The Shariah system being Divine, it is opertive for ever it remains fixed and is perennial. The manufactured system do not posses an a internal manifestation but remain operative only till such time as they are kept and forced by the temporal power. The Shariah is operative by internal manifestation and work, on human conscience. There is no need of enforcement through belief, It never requires any other authority to enforce it. The initiated system work through a negative approach and consider man wrong in his actions. Here the role of the system ends. In the Shariah a positive approach is made by the principle of reward which makes man do good deeds remain human and the best of the creature. The manufactured system contain partial and prejudicial principles. For example, there are racialism in the West or the whites,

labour prejudices in the communists countries and Jewish Zionistic approach. The Shariah approach is through universal brotherhood aiming at peace and prosperity of the human race with submission to the creator of the whole universe. All these lead to the conculsion that the Shariah system is supreme.

In the modern palitico - legal science, the origin and relationship of law and state is a matter of controversy. There is no settled point about the science itself, and different theories are adopted and argued out and conclusions drawn. Some say that the state is superior to Law and creates it, while others are of view that law precedes the state and binds it when it comes into existence. Some others take a combined view that law and the state are one and the same thing locked at from different points of view.

The principles of the Shariah lay down the features of a just ruler. When state violates the rule of the Shariah, as based upon a principle of human rights, it is a duty to disobey such a state authority or government. The concepts of Imamate and Caliphate are based upon the theory of contract with the Public. The moment, the ruler or the government violates the covenents entered into with the electors, the change of government is essential. The Quran says: "My covenant includeth not wrong doers." (II:124) : similary, The Prophet said: "Obedience is only for the lawful orders." The first sermon of Caliph Abu Bakr, at his election is a historical example in the matter of obeying a just ruler or government. If leads to the natural result that the Shariah principles imply the protection of human right in a most comprehensive manner.

In the aforsaid discussion we have seen the ideals and practicle principles of Islam. The practicle - philosophy of the enternal principles are also called Majmual-ul-Ahkam, al-AMALIYYAT, AL-Mashruahfi, al-Islam or al-ILM-bil-Ahkam, al-Shariat, Al-Amaliyyah. The method of operation of the principles of the Shariah is both materialistic and spiritual. For the reason of a combined action the rules of law as contained in Ahkam are applied severally by a variety of machanism. The Qadi is ordinarily concerned with external actions of man and the Mufti gives his opininon which usually operates internally or towards the self of man. The conception of the Shariah is not available in anyother man-made system and for that reason the Shariah system is always based upon the nature of man's creation and his would be behaviour here and hereafter.

The above facts of the Shariah system lead us to another aspect of the situation. It shows that the system concerned being vitally different from other conception and having been framed upon a principle in accord with human reason, is for superior and fixed permanently for human existance. On a review of the legal and political history of the world. It is noticed that good features of all systems are already a part of the Shariah. Its nature provides for thesame and, moreover, it presents in a most refined manner anything which is beneficial to mankind. We have judged and tested comparison many of the underlying principles of man-made sciences and have concluded impartially that the system of the Shariah possesses an enternal massage for mankind.

Modern Concept of Shariah.

There are people who consider the Islamic Shariah is unadoptable for modern living. The reply of this is simple and lies in the plain fact that these people have not studied the Shariah as independent observers.

For a time, if we accept that thetime factor is involved in the case, it would have been a truth that the modern laws or system of Europe (as Belgium, Luxembourg, Albania, Yogoslavia, etc) might have made these countries for more strong, advanced and progressive than England, America and other Countries. Moreover, the roots of legal systems of the advanced Countries of the contemporary world lie deep in the ancient systems. The old Common Law isthe bases of the systems prevelent in the Latin American, Canada and the United States, Germany, France, Japan and even the Communist Countries have adopted the ancient the Roman legal system as civil law. As compared to this old inheritance, it may be said that the system of Islam is of recent date, and even an impartial observer will acknowledge the debt owed by contemparary systems of Islam and institutions of its Shariah.

The system of Shariah proceeds, in addition to prevention of blame worthiness in human conduct and action for a reform of human society, for the recognition of the highest ideals of life for this world and the world hereafter.

The aspects of the life of man for betterment of his lot are given consideration by the Islamic System. This ideal is not present in the manufactured systems which only work to prevent what is wrong or offensive. The latest method of human approach considers the contemporary rule of law unsatisfactory. The recent publications of the International Commission of Jurists, the centre of World peace through Law, the moment of democratic lawyers from France and Belgium and the legal working and international conventions for elimination of poverty, illiteracy, nuclear treaties and control on such weapons, desire and preach to control the power of governments through the protection of human rights not necessarily by the rule of law but by noble ideals.

In other words there is grcwing movement among the western nations and the nations under the orbit of influence to achieve more than what is given by their laws. The endeavor to fetter givernmental powers by rules and laws which would protest individual human values. These New movements and the attempts of many of the humanists to establish a world federation of all human beings go to show that man is in search of an order and a system more comprehensive for the betterment of his breed. If we compare these new thoughts with the magnificent Shariah, It may be seen that the situation of man's problems are available. It shows and proves that the Shariah isnot only supreme and in accordance with the needs of man; it also contains principles which are for all time and place.

- ISLAMIC JURISPRUDENCE IN THE MODERND WORLD - BY ANWAR A. QADRI LAHORE - ASHRAF PRESS LAHORE 1963 Page 19-41

SHARIAH LAW AND USE OF FORCE FOR ITS IMPLEMENTATION IN A ISLAMIC STATE. (II).

The mere enactment of good laws, the Quran asserts, is not enough to ensure peace in the World. It is necessary that the laws should be properly enforced.

لَقَدْ اَرْسَلْنَا رُسُلَنَا بِالْبَيِّنٰتِ وَاَنْزَلْنَا مَعَهُمُ الْكِتٰبَ وَالْمِيْزَانَ لِيَقُوْمَ النَّاسُ بِالْقِسْطِ ۚ وَاَنْزَلْنَا الْحَدِيْدَ فِيْهِ بَاْسٌ شَدِيْدٌ وَّمَنَافِعُ لِلنَّاسِ ۔ (1)

"We sent our Messengers with clear arguments and with these our laws and the criterion of justice so that man may establish himself in justice and with it, We have also created steel wherein is mighty power and many other uses for mankind.

In other words law which is not backed by force is no more than pious advice. Law must be enforced if social order is to be maintained. The Quran, therefore is in favour of the state maintaining sufficient power to enforce its law. If the Quran calls God AS-SALAM, the source of peace, it also applies to Him the terms Protector, the Mighty, the compeller, and the self reliant. The state should reflect these attributes as well.

The power vested in the state should be used to maintain law and order as a defence against those who threaten its independence. The state is not to use its powers and to curtail the freedom of individual. The purpose for which the state exists is to maintain conditions in which the individual can develop and achieve self realisation. This purpose is fulfilled only when the state is fully independent and prepared to meet aggression from any quarter.

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(1) QURAN AL-HADID (57-25)

But at the same time, people if they are really persecuted have a right to rebel against the Government of their country. However, they would be acting directly against the Quranic principles if they magnified any petty grievance and called it persecution. They may be said to be the victims of persecution only if the basic rights, defined by the Quran are denied to them.

"If you fear treachery anyway at the hands of people then throw back to them (their treaty) fairly and thus dissolve it with them equally Surely Allah loves not the treacherous. (1)

Extract of Enforcement of Commandments :

1. "Thou shall continue to worship God as those always hast and live by His commandments, the only difference being that how you shall acknowledge that you do so at our command and pleasure and not because you would have done it anyway".

2. "Thou shallaccept the interpretation of the scripture as we have interpreted them and not as they conscience and common sense view it, for thine are unlettered or unspecialised, the spirit and expectation of the Holy Book nowithstanding, in other words, you are not allowed a mind or for that matter a will of your own".

3. "Thou shall not attempt to disprove or oppose self evident truth that these laws are not necessarily applicable to the law makers."

4. "The law is only that which we say it is in other words, you have no say in the matter, the consensus expected by God nowithstanding."

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(1) QURAN AL-ANFAL (8:57)

has the upper hand is a living sign of who shall be master."

"Thou shall not question this law for it has been devised by the betters, namely those in power, those who have bargaining strength and may be those with a hand in the kitty".

"Let no man, on pain of life imprisonment, lashes or even death, ever dare question OUR authority or call on other judges to judge Us for it is our pious duty, done voluntarily out of goodness of our hearts, to act on behalf of God by attending to such miserable minutae on earth."[1]

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[1] THE NEWS - 24/5/91.

CERTAIN SECTION OF SOCIETY IN ISLAMIC STATE. (1)

A group of people and certain prominent political leaders of Pakistan see the ensalvement of women and minorities in the promulgation of the Shariah without giving argiments for the same. No notice should have been taken of such a baseless allegation, but for the fact that such persons and leaders and as such their allegations howevers, baseless provide powerful ammunitior for the foreign press already engaged in a insidious propaganda against Islam. It could be their lack of knowledge or an advertant allegation to suit their taste and temprament but the facts are different what they say.

Islam grants equal status to woman with man in her moral and spiritual stature. Says the Holy Quran: "The believers man and woman are protection, one of the other, they enjoin what is right and forbid what is evil (1) . But in matters falling outside the scope of what is right and what is wrong, man and not woman has been installed in the position of "a protector and maintainer" and woman has been enjoined upon to be devoted to man. This is what Allah has commanded. Men are the protectors and maintainers of women becuase Allah has given the one (More) strength than the other and because they support them from their means, therefore the righteous women are devotedly obedient and guard (in husband absense) what Allah would have them guarded . But the authority of man is related to his responsibility as maintainer & protector of the family. This authority is to be exercised capriciously or harshly. In case of an apprehended breach between them Allah has provided for the appointment of two arbiters one from the family of each to bring about reconcilation between them . This is to be ensured that the woman is not at the mercy of man.

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(1)__ QURAN AT-TAUBA (9:71)

Allah sent down his wrath upon Pharaoh and followers and destroyed them but Pharaoh's wife who was a pious woman and who prayed to ALLAH to keep her aloof from the misdeeds of her husband has been highly praised and admired by Allah and made an inspiring examples for the believing women . This brings out the right of a woman to assert her independence from her husband, come what may, in pursuing the right path.

A.P. Biryu Kova secretary all Union General Council of trade Union USSR in his article on equality of opportunity for women in USSR published in the International Labour Review January, February, 1980 has advocated for restricting certain fields and prohibiting altogether certain other fields of employments for woman. He has based his recommendation on a number of medical research studies carried out on the physiological constitution of women. These research studies have high lighted some of the serious phsiological and psychological handicaps and defeciencies of woman that renders her specially vulnerable to certain mental physical disabilities and diseases while working in a modern industrial complexes.

Russian womanhood inspite of its unprecedented progress in education, science and technology has degenerated to such an extent that Gorbachev in his book PRESTROIKA has expressed his great concern and anxiety over the state of Russian woman and has for the day when the Russian woman would go back to her primarily womanly mission of being a mother and a home-maker.

Now comming to the enslavement of the minorities as alleged by certain class of people, let it be pointed out that nothing would be more alien to an Islamic way of life and thought than to enslave any part of the humanity whatever be the religion. The Holy Quran is replete with injunctions to the believers to spend from what Allah has given them on the liberation of the slaves. Allah in his divine charter of liberty and dignity granted to the huminity at large has thus proclaimed. "It is He who hath made you his Agents, inheritors of the earth. He hath raised you in ranks some above others, He may try with gifts he hath given you." (1) . According to the Divine proclaimation, the entire mainkind irrespective of its religion, race, cast or creed has been created God's Agents and inheritors of the Earth.

The rights granted by Allah to man irrespective of his religion cannot be created or destroyed by any Islamic State. It does not require even constitutional guarantee or protection.

Misunderstandings have arisen from the commandment in the Holy Quran which deal exclusively with those non-muslims who took up arms against Islam and were defeated in the course of conflict. Their right and status stand on different footing not so much becuase of their being non-muslim but solely from their taking up arms against Islam with a view to destroy it.

The Jazia Tax was imposed on the members of these vanquished rebels but only on those who were ablebodied, were fit to serve in the military, but were not required to serve in it. But the tax proceeds were spent on the protection of the life and property of those vanquished rebles. The women & children were exempt from it. Similarly the old, the disabled and those having no ability to pay, were also exempted. Where the Zimmis on their own, chose to render military services, they were exempted from payment of Jazia. Not only the old and the disabled among Zimmis were exempt from paying Jazia but they were also provided with their livelihood from the state treasury.

In the matter of protection of life no discrimination was allowed between the protection of muslim and the protection of a Zimmi. If a muslim killing a Zimmi he was awarded the same panelty of Qisas (death). One Zimmi complained that his grapes were picked away from his orchard, he was duely compensated for that.

Those non-muslims who were already living in the land when it came under Islam as a result of treaty, they were granted full rights & were not required to pay any Jazia. They enjoyed not only the freedom of thought and expression but also the freedom of preaching their religion subject to the same condition which applied to the muslims as well.

Muslims have been taking part in Jahad (The Holy Crusades) and allowed their share in the war booty. In the conquest of Iran, Christian took part in the expedition and when they fell they were treated with the same honour. On the conquest of Egypt one of the coptic Christian was appointed as the head of department dealing with personal laws of the Christians.

In the matter of recruitment to important and sensitive position in the Islamic administration only two conditions has to be satisfied which is universally followed in all the modern secular states today, namely, that the condidates should on merit be found fit to hold the post and that he be the loyal to the Islamic regime.

Allah has enjoined tolerance, kindness and justness towards all those non-muslims who do not fight against the faith of Islam and against the muslims; the Holy verses read: "Allah forbids you not, with regard to those who fight you not for your faith nor drive you out of your home, From dealing kindly and justly with them for Allah loves those who are just." (1)

It is quite in keeping with these noble ideals as enshrined in the Holy Quran and exemplified by the traditions of the Holy Prophet that the non-muslims every where in Islamic world are progressing and prospering shoulder to shoulder withthe muslims. Even during the days of tension, cold war and hostilities between Israel and the Arabs, all the jews inspite of their innate sympathy for Israel continued to enjoy in muslim countries perfect peace and tranquility and were not discriminated against in any way. As against this the muslims in the occupied teritory have always been subjected to all sorts of discrimination and Oppression.

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(1) QURAN AL-MUMTAHINA (60:8)

be a Jew or Christian the moment he believes in our Prophet (PBUH). Last but not the least, the Hindus are living in perfect peace and prosperity inspite of frequent communal riots in India in which muslims are being killed in thousands.

Let these facts speak for themselves and allay all the apprehensions and misgivings about women and minorities in an Islamic State — under Shariah.[1]

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[1] THE NEWS - 31-6-1991 - ISRAR-UL-HAQ.

attempt to bring the legal system in harmony with the holy and sacred tenets of religion "for the first time in Pakistan", as the sensational phrase goes. A glance through the legal history of the subcontinent, however, reveals the facts to be quite contrary to this assention.

Islamic laws both in civil and criminal procedures, have been in force in the subcontinent in the distant past. With the passage of time, such changes as were deemed imperative to the growing consciousness of human rights were brought in. What was now needed was to reform the existing laws to bring them in conformity with the added growth of consciousness among the populace of Pakistan rather than revert to the latter while divorcing it completely from the spirit, of Islam. The latter in the esteem of every sensible Pakistani Muslim is consonant with progress and continuous betterment of Muslim men, women and children as also of the non muslims living in a predominantly muslim state.

To be acceptable to the populace, any law must be in consonence with the level of civil and humanitirian consciousness of the people for whom the law is intended. The modern day sociologists of Islamic countries make a distinction between the "Fundementalists" andthe rest of the Muslim polity on the premise that the former adhere to the 'latter blindly", without taking into consideration the enormously enhanced consciousness of the people, the irreversible changes that have been brough about in the society over hundreds of years, and the change in the very perception of the relationship of the invididual to the society and vice versa.

For a better understanding of the above-mentioned changed perception, we may examine the "Letterwise", categorisation of the Islamic criminal procedure which is Qisas, Diat, hadd and taazeer.

Pakistan is a signatory to the United Nations human rights charter. In the comity of nations, how can we violate one of its cordinal principles? Nor would common Pakistanis themselves wish to reduce to the status of second-rate citizens their non-muslim Pakistani brethren.

The so-called Islamisers are setting out to do the greatest harm to the religion of millions of Pakistanis. They are also violating the very spirit of Islam, which is one of equality, justice and continuous progress. They would, God willing, fail in this unholy mission of trying to set up religion against good sense and against the ethos of Pakistani people. It may be true that in Saudi Arabia public beheading is held on every Friday and big crowds come to watch the show. It is the internal matter of Saudi Arabia and we can only make the observation that the Saudi society has not followed the course of evolution that we here in Pakistan have traversed. The Almighty Allah in His infinite wisdom has endowed human beings with common sense, which has kept Islamic values dear to the muslim polity through the ages, without this beloved religion ever coming in conflict with humanitarian consciounness and the process of civilisation. The spirit of the time is equally for all, irrespective of sex, caste or creed. It is only the muslms of Pakistan who can save Islam from the clutches of fundamentalists who are out to defame our religion and destory civilisation.[1]

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[1] DAWN - 08-07-1989 BY FAMIDA RIAZ.

if in a brawl A and B, A breaks the leg of B the breaking of A's leg too would not normally be considered the best form of justice since it ends up creating two cripples for the society by seeking to punish the creating of one.

Secondly, the fundamentalists divide crimes in two Categories : (a) crimes against God, such as drinking and promiscuity, which attract Hadood; (b) crimes against individuals, such as stealing and murder.

Crimes under second category were not considered as offences against the society, and individuals affected could actually let the culprit go scot-free.

These fundamentalist laws were actually in practice in India and many such instances can be traced in the Bengal revenue consultations prior to 1970. In one such case, a man murdered his brother so that the latter might not claim a share in their father's property. The third brother who was legally the closest relative of the deceased, refused to demand Qisas from his brother, the murderer, and the property was later divided between these two surviving brothers.

Today every muslim and Pakistani has to search his conscience and ask where he is being had. The brunt of this socalled Islamisation, it seems, has to be borne by the muslim women of Pakistan. It is perhaps because they are the weakest section of the society. In the case of witnesses, much publicity has been given to the Islamic Law of evidence making the testimony of two women equal to that of one man. However, according to the same fundamentalist principle, non-muslim male withnesses are considered equal to one muslim male witness. This latter part is not given publicity perhaps because the "Islamisers" do not wish to hold it up to the world.

CHAPTER - 2

i. Definition of Islamic State.

ii. Why the Divine Law is essential in a Islamic State?

iii The causes of Non-Implementation of Shariah Law in Pakistan.

In fact, the word "Islam' itself means "Submission to God" and clarifies the notion of sovereignty in the Shariah Law.

The Quran defines "State" by the words like Ard or Earth and Mulk or dominion which have a territorial connotation. The word Mulk signifies power in relation to what is concrete, i.e. territory, whereas the word MALAKUT suggests God's dominion over what is invisible and far beyond human comprehension. Since the word MULK itself has two shades of meaning as understood from the context in which it is used in the Quran ------------------------------ as an indirect connotation to territory and suggestive of domination in relation to all that is concrete in other places .

The state is hence a concrete entity in which the Ummah attains righteousness. It means that the state is one where the Ummah achieve the dominance. The latter has been referred by the Quran as KHAIR UL UMMAH or UMMAT-I-IBRAHIM, as Islam recognise prior revelations. It shows that the state does not come into existence as an end in itself but takes shape only as a means for the righteous people to administer it on the basis of righteousness.

It is stated in the Quran: "Thus we have made of you an UMMAH Justly balanced that ye might be witnesses over the nations, and the Apostle a witness over your self (1)). The government being a representative of the UMMAH, it is administered on behalf of Allah by principles of righteousness.

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(1) QURAN AL-BAQARAH (2:143)

The power relating to state is granted in the light of Quran on the principle provided by the book. The principle runs: "Surely God does not love the mischief makers,' and moreover, "But my promise is not within **the reach of the evil-doers,** "i.e. righteousness is the conduct which is prescribed for all including the UMMAH and also for the state formed after or materialising for the same formation.

The above goes to show that the government is a trust which God has placed in the hands of the rulers or Governors for the benefit of humanity and it is also a trust in the sense that it is a representative of the UMMAH. and is thus responsible to it. The two props of the government are Trust and Justice. The state in Islam has Justice and righteousness at its ends to this extent it is therefore, theocratic, but it is entirely secular when the activities and functions of the entity are considered. Government enjoys obedience and loyalty of the faithful as long as it conducts its affairs according to the Islamic spirit and ideals. But loyalty is qualified by the ideological existence of the state and thus, it may be observed that no sooner does it change its ideological nature than loyalty of its citizens also disappears. The determining factor is the change of the nature and fundamentals of its policy. Therefore, the non-essentials do not justify revolution and rebellion. The idea of rebellion or revolution is not against the state but it is against the government which violates the precepts and limits laid down by the Shariah. All the institutions of the government are bound by it including the governed.

The conception of the "State" and Sovereignty in Islam is distnict and unique from anyother conception. At the highest level of the corporate existence is the UMMAH and there is the establishment of the government which aims at justice and righteousness preached by religion. The reason lies in the fact that neither law or state becomes diety in religion.

human or institutional, that could claim to be a representative of God. There is no theocracy in the Islamic state. God is God and man is man. The Prophet was a bearer of the revelations, which terminated with the Prophets passing away. The Shariah laws which he left behind are the Laws of Allah. They are not God. In contrast to the Western concept of "theocracy" Islam is a revolt against all anthropomorphic implications in the realm of faith. With the muslim concept, religion is not entirely a private affair between man and God. Nevertheless, with privacy, the individual is ruled by a code of law which is binding on all, without establishing any kind of sanctity in a man or a class of men.

On the basis of the Quranic injunction "And those who do not rule in accordance with what is revealed by God are disbelievers." (Qr. v-44). It is fundamental and mandatory to get guidence from religion. The sources of religion are contained in the Quran, the Sunnah, the Ijma, and Qiyas; these are the basis of the science of law in Islam. It clarifies that the Shariah has a unique place in the muslim legaland constitutional theory together with all other kinds of economic or social principles. The Shariah, under its theory of predominance over other laws, has the actual position of Sovereign principles, and none being above the same, even the authority of government if violative of the sacred principles is not to be obeyed for "a word of justice uttered before an unjust ruler is the greatest Jihad.

- ISLAMIC JURISPRUDENCE OF MODERN WORLD BY ANWAR A. QADRI
  LAHORE - ASHRAF PRESS LAHORE 1963 PAGE 269-274

Shariah Law and its importance to the Muslim Community. For the information of the people of the Muslim faith, I would like to express my feelings that the implementation of Shariah Law in a Muslim State is inevitable as defined in the Divine Law.

When a Govt. declares that it will be an Islamic Republic State, it binds the Govt. to run the state under the guidance of Shariah Law and no, other law will prevail upon it. The Holy Quran is a book which gives us the Divine Law and also the precepts & practices (sunnah) of our Holy Prophet (PBUH) give us the procedure for the implementation of Shariah Law to follow.

A person who is called Muslim means he has embraced Islam as his religion and followed the commandments of one God as to what is prescribed in Holy Quran & Sunnah. If he defects he is not a Muslim meaning thereby that he refused to accept the injunction of Holy Quran. Refusal to accept the injunction of Holy Quran makes him a disbeliever of God and invites the wrath of God.

A Muslim Govt. of a State is bound by the injunction of Holy Quran to form the Govt. under the Shariah Law. Any delay in this matter by the Govt. shall be construed as a delebrate attempt of avoidance of the implementation of Shariah Law which is a sin and punishable under the Divine Law.

In other words Law which is not backed by force is no more than a pious advice. Law must be enforced if social order is to be maintained by the Govt. of Islamic State.

WHAT IS AN ISLAMIC STATE

An Islamic State is an ideal state. It is theocratic only in the sense that its fundamental principles are God given. But it is altogether a different theocracy from the one of which Europe has a bitter experience and in which a priestly class is sharply marked from the rest of the papulation and exercises an unchecked domination and enforces laws of its own making in the name of God and thus virtually imposes its own notions and ideas upon the common people.

Such a system has no place in Islam. The theocracy built by Islam is not ruled by a particular religious class but by the whole community of Muslims including the rank and file. The entire Muslim papulation runs the State in accordance with the injunctions of the Book of God and Sunnah of the Prophet, (PBUH). It is theodemocracy rather than a pure theocracy or pure democracy, because under it all the Muslims and not any particular class or group of persons have been invested with a limited papular sovereignty under the Suzerainty of God.

It is needless to say that there is no priesthood in Islam. And there is no gainsaying the fact that the Divine faith is not the birth right of the chosen few. Every Muslim is the vicegerent of Lord upon the earth and thus stands on the equal footing with the others. No one has any precedence over an another by virtue of his high birth. That way Islamic Society is a classless society. There is no church and no group with special privileges and interest. But the exposition of the teaching of Islam is as it rationally should be within the jurisdiction of only those who are best qualified for it. The interpretation of Law is, therefore, the right of the men of knowledge and integrity. The keys to knowledge have been placed at the command of everyone who diligently applies himself to unlock the treasure house of learning with pious intentions.

Islam enjions worship of one God, dictates an orderly society forbidding, oppression, expliotations and foul play and enjoining honest living upon its followers. Prophet Muhammad (SAW) established a society based on equality, faternity and justice. His exemplary life produced a large number of selfless and virtuous persons who brought about a revolution in the annals of mankind. The followers of Islam blazed a great tradition of dignified and fair dealing. They breathed a spirit of generosity and they set up a system that is human and workable. They created a society free from cruelty and sccial oppression.

According to the teaching of the Quran the State or Society is an organ whereby high ideals of Sccial justice and equality which the Holy Prophet (PBUH) set before humanity can be translated into practical reality. Islam is not a private relationship between man and God. A Muslim has several responsibilities towards the state and humanity, so that the orgnised life of man has to be based on love, fraternity and justice. But it should be made clear that Islamic State is not an end, the end being the growth of a community of people who stand for right against wrong, that is for the creation and maintenance of such social conditions as would enable the greatest possible number of human beings to live in tune with the teaching of Islam.

The Quran has succinctly summed up the function of Islamic State in the following words :-

"Those who, if we give them power in land establish worship (salat) and pay the poor due (zakat) and enjion the right and forbid wrong." (22:6)

This shows that the function of an Islamic state is not merely to defend the people from an exterral attack and internal disorder, but to enable man and woman to realise the tenets of Islam in their beliefs and in the practical Socio-Economic concerns of their life. If the state perform these functions, then alone it can be rightly discribed as Islamic, otherwise it would be a misnomer.

Islam in fact is a theocracy in relation to God and a democracy between man and man. The history of Islam is replete with instances of the Caliphs being brought to court and publicly criticised by ordinary men and women. This shows that the officials in Islamic state are responsible both to God and man and the people have every right to criticise not only their public behaviour but also their personal conduct.

The Amir (or head) of a Islamic State unlike the head of conventional theocracy is required to take council from Majlis-i-Shura the parliament ducly elected by the people in all important matters of the State. Since nobody after the Holy Prophet (PBUH) receives direct guidance from God. The Quran says :-

"Their (the believers) affairs are transacted in consultation among themselves". This explicit injunction must be considered as a fundmental operative clause of all Islamic thought relating to state craft.

Universal education both for men and women is considered the sacred law of Islam. The Prophet himself said :- "To seek knowledge is a duty for every Muslim (male) and every Muslim (female). Indeed he stressed the importance of knowledge to such an extent that the Muslim thought their foremost duty to acquire it. It is also the responsibility of the Islamic State to see that no citizen shall remain unprovided for in respect of the basic necessities of life.

In short, the smooth development of human relationship, establishment of peace, enforcement of justice, equality of opportunity, security of state, unity of thought and action, improvement of moral standards, refinement of culture and promotion of welfare and brotherhood are the foremost concerns of an Islamic State, (Dawn - 8-11-91 "The concept of state in Islam").

The injunctions that have been prescribed in the Holy Book by the Almighty asking the Holy Prophet to enforce it in the Islamic State cannot be ignored and avoided.

This has been emphatically commanded that those who do not give justice in accordance with the Law given to them are - **"FASIKOON"** & **"ZALIMIN"** and they will be punished.

Stressing upon the Muslims who have faith in one God and His Prophet Mohammad (PBUH) is to follow the Divine Law in the worldly life, He revealed through His prophet (PBUH). Innumerable AYATS in the Holy Quran of which few are quoted in the next pages clearly indicate that a Muslim State must enforce Divine Law in the State Otherwise it will tantamount to refusal to God's commandments which is a Sin and punishable.

Hence the Head of State of a Islamic republic or his Colleagues who deliberately avoid it, or refuse to Implement it and fabricate lame excuses for its non Implementation are the Sinners and come under the wrath of God.

It rarely falls to the lot of a people to be given a law that provides the foundations of true freedom. Peace, prosperity and honour. The Magna Carta in England and code of Nepoleone in France, the original constitution of United States are eminent example of such law. Centuries before, the Holy Quran and sunnah of the illustrious Prophet Muhammad (PBUH) Surpassed all previous and subsequent Charters for establishing social justice, the indepth dimensions of which extended over every facet of life. Laws derived directly or otherwise from the Islamic concept are included in every constitution through out the world. But as it happened, vested interests soon frustrated the great blessing and in the course of time Muslim Societies degenerated until they split into nations and communities and even sects and lived by the law of the oral word of dictators.

A few AYATS are Quoted here-under for enforcement of Divine Law in Islamic State :-

فأولئك هم الفاسقون (1)

revealed, they are (no better than) These who rebel.

وَأَنزَلْنَا إِلَيْكَ الْكِتَٰبَ بِالْحَقِّ مُصَدِّقًا لِّمَا بَيْنَ يَدَيْهِ مِنَ الْكِتَٰبِ وَمُهَيْمِنًا عَلَيْهِ
فَاحْكُم بَيْنَهُم بِمَا أَنزَلَ اللَّهُ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ عَمَّا جَاءَكَ مِنَ الْحَقِّ لِكُلٍّ
جَعَلْنَا مِنكُمْ شِرْعَةً وَمِنْهَاجًا وَلَوْ شَاءَ اللَّهُ لَجَعَلَكُمْ أُمَّةً وَاحِدَةً وَلَٰكِن
لِّيَبْلُوَكُمْ فِي مَا آتَاكُمْ فَاسْتَبِقُوا الْخَيْرَاتِ إِلَى اللَّهِ مَرْجِعُكُمْ جَمِيعًا فَيُنَبِّئُكُم بِمَا
كُنتُمْ فِيهِ تَخْتَلِفُونَ (2)

2. To thee We sent the scripture in truth, confirming the scripture that came Before it and guarding it in safety. So judge between them by what Allah hath revealed, and follow not their vain Desires, diverging From the Truth that hath come to thee. To each among you Have we prescribed a Law and an open way. If Allah has so willed. He would have made you A single people, but (His Plan is) to test you in what He hath given you: So strive As in a race in all virtues. The goal of you all is to Allah: It is He that will show you the truth of the matter in which you dispute.

شَرَعَ لَكُم مِّنَ الدِّينِ مَا وَصَّىٰ بِهِ نُوحًا وَالَّذِي أَوْحَيْنَا إِلَيْكَ وَمَا وَصَّيْنَا بِهِ إِبْرَاهِيمَ
وَمُوسَىٰ وَعِيسَىٰ أَنْ أَقِيمُوا الدِّينَ وَلَا تَتَفَرَّقُوا فِيهِ (3)

3. The same religion has He established for you that which be enjoined on Noah-That which We enjoined on Abraham, Moses and Jesus: Namely that ye should remain steadfast in religion and make no divisions therein.

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(1) QURAN AL-MAIDA (5:47)

(2) QURAN AL-MAIDA (5;48)

(3) QURAN AL-SHOORA (42:13)

4. And obey not him whose heart we have made heedless of our remembrance one who follows his own Desires, whose case has gone beyond all bounds.

قُلْ مَا يَكُونُ لِي أَنْ أُبَدِّلَهُ مِنْ تِلْقَاءِ نَفْسِي (2)

5. The Prophet (PBUH) said I have no authority to change any thing in the Holy Quran.

وَمَنْ لَمْ يَحْكُمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الْكَافِرُونَ ط (3)

6. And if any fail to judge By (The light of) what Allah Hath revealed they are (No better than) unbelievers.

وَمَنْ لَمْ يَحْكُمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الظَّالِمُونَ (4)

7. And if any fail to judge By (The light of) what Allah Hath revealed they are (No better than) wrong doers.

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(1) QURAN AL-KAHF (18:28)
(2) QURAN AL-YOUNUS (10:15)
(3) QURAN AL-MAIDA (5:44)
(4) QURAN AL-MAIDA (5:45)

وَلَا يُشْرِكُ فِي حُكْمِهِ أَحَدًا ۝ (1)

8. Other than Him, nor does He share His command with any person what so ever.

اتَّبِعُوا مَا أُنزِلَ إِلَيْكُم مِّن رَّبِّكُمْ وَلَا تَتَّبِعُوا مِن دُونِهِ أَوْلِيَاءَ ۗ (2)

9. Follow that which sent down to you from your Lord and follow not any other protector other than Him.

فَإِن لَّمْ يَسْتَجِيبُوا لَكَ فَاعْلَمْ أَنَّمَا يَتَّبِعُونَ أَهْوَاءَهُمْ ۚ وَمَنْ أَضَلُّ مِمَّنِ اتَّبَعَ هَوَاهُ بِغَيْرِ هُدًى مِّنَ اللَّهِ (3)

10. But if they hearken not to thee, know that they only follow their own lusts And who is more astray than who follow his own lusts, devoid of guidance, From Allah.

ثُمَّ جَعَلْنَاكَ عَلَىٰ شَرِيعَةٍ مِّنَ الْأَمْرِ فَاتَّبِعْهَا وَلَا تَتَّبِعْ أَهْوَاءَ الَّذِينَ لَا يَعْلَمُونَ ۝ إِنَّهُمْ لَن يُغْنُوا عَنكَ مِنَ اللَّهِ شَيْئًا ۚ وَإِنَّ الظَّالِمِينَ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ ۖ وَاللَّهُ وَلِيُّ الْمُتَّقِينَ (4)

11. Then we put thee On the (right) way On Religion: so follow Thou that (Way), and follow not the desires of those who know not. They will be of/no use to thee in the sight of Allah: It is only wrong-doers (That stand as) Protectors, one to another: But Allah is Protector of the Righteous.

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(1) QURAN AL-KAHF (18:26)
(2) QURAN AL-AARAF (7:3)
(3) QURAN AL-QASAS (28:50)
(4) QURAN AL-JASIA (45:17-19)

(1) لَا طَاعَةَ لِمَخْلُوْقٍ فِيْ مَعْصِيَةِ الْخَالِقِ

12. The Prophet (peace Be Upon him) Said – No such act of a man shall be permitted by which disobedience of All mighty is incumbent.

The man made law has influenced the muslim nation so much that the Divine Law has been completely ignored by this nation.

The great leaders and religious scholars who are renowned for their learnings in Islamic Law take it just a sacred and Holy book to read and that's all. And not ready to consider it a Leading law book for muslim nation to follow. They believe that the man made law is the source of solution for all the legal problems of the man. But they have never given any thought to the Holy book and sunnah which is the basic source of solution of all problems of civil and criminal nature for muslim nation and people at large in a Islamic state. They should confess that this is the only book which can bring the nations on the shore of peace & prosperity out of troubled waters in which they are drowned.

TRANSLATION:

قَدْ جَآءَكُمْ مِّنَ اللّٰهِ نُوْرٌ وَّكِتٰبٌ مُّبِيْنٌ ۙ يَّهْدِيْ بِهِ اللّٰهُ مَنِ اتَّبَعَ رِضْوَانَهٗ سُبُلَ السَّلٰمِ وَيُخْرِجُهُمْ مِّنَ الظُّلُمٰتِ اِلَى النُّوْرِ بِاِذْنِهٖ وَيَهْدِيْهِمْ اِلٰى صِرَاطٍ مُّسْتَقِيْمٍ (2)

There hath come to you from Allah a (new) light and perspicuous Book: Wherewith Allah guideth all who seek His good pleasure To ways of peace & safety and leadeth them out of darkness, by His will unto the light-guideth than To a path that is straight.

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(1) AL-HADITH (TAFSEER IBNE KASEER)
(2) QURAN AL-MAIDA (5:15-16)

It is the height of misfortune of the Muslim Nation that they have not so far developed that much sense of knowledge to know the causes of the failure for implementation of Divine law in an Islamic country. They haveput themselves in the lap of man made law and feel satisfied with it. Moreover our Ulema and religious scholars who are well versed in Shariat law have not been able to educate the public at large by which they could develop a sense of understanding in them to know the importance of Islamic Law and its implementation in an Islamic State.

Pakistan being an Islamic state as mentioned in the Constitution of the country could not so far promulgate the Islamic Law due to difference of opinion in between the political parties, religious cum political parties, bureaucrats, who are holding the reign of government and who are the actual power and authority behind the state rule.

In order to find out the causes of controversies I give hereunder few opinions of those who are against this promulgation and those few who are in favour of it.

Against Promulgation of Shariah Law. (1)

(1) Pakistan People Party

(a) Hundreds of men and women Marched from the Lahore High Court to Assembly Chambers here on Saturday protesting against the Nifaz-i-Shariat Ordinance. The Rally, initiated by the PPP women wing and joint action committee said that the Ordinance is Anti-people. (2)

(b) Additional secretary general of PPP Punjab Mr. Malik Hakimin Khan termed the Shariah Ordinance a joke with the nation. (3)

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(1) DAWN (9:10:1988)
(2) DAWN (3-7-1987)
(3) DAWN (3-7-1988)

(2) **Jamiat-Ulema-i-Islam Pakistan.**

Jamiat Ulema-i-Islam has termed the promulgation of shariat ordinance as the "Last nail in the coffin of 1973 constitution".

Maulana Fazl-ur-Rehman secretary general J.U.I. said Gen Zia has no authority to run the affairs of the country or make laws. By talking of gradual implementation, of Islamic system the General wanted to strech his rule further. He said that this Ordinance is a link in the series to create difficulties for shariat in the name of shariat.

(3) **Mr. Aitzaz Ahsan, Independent Politician and Jurist.** (2)

He said that the shariat Ordinance is haphazard and ill considered piece of legislation whose scope is much narrower than what it purports to state. He said even otherwise it is wholly ineffective in the eyes of law. In section 3 of Constitution for instance it purports to make Shariat the supreme source of law in Pakistan But this is not possible. The supreme law of land in Pakistan is and will remain the constitution of Pakistan. Shariat can only be applied to the extent that it is not in-consistent with the provision of constitution of Pakistan which was Unanimously accepted by the representatives of all provinces in 1973.

(4) **J.U.I.**[3]

Maulana Muhammad Amir Bijlighar Provincial Chief of J.U.I. (Fazalur Rehman Group) addressing a public meeting at shiwa adda (Takhaat Bai) presided over by Maulana Abdul Qayyum. He termed the shariat ordinance a Fraud with the Nation. He said that the ordinance has been promulgated by President General Zia-ul-Haq for prolonging his rule.

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(1) DAWN (17-6-1988)

(5) **Mr. Zain Sheikh** [1]

The ostensible purpose of the shariat ordinance recently repromulgated was the revision of the ordinance passed in June. The New ordinance was a malafide attempt to subvert the constitutional process by doing indirectly what could not be done directly.

(6) **Jamiat-Ahle Hadith Pakistan.** [2]

General Secretary Sajid Mir has said that J.A.H. would oppose every Shariate Bill and not acceptable to this school of thought.

(7) **Lahore High Court Bar Association.** [3]

The Bar Association has demanded immediate with-drawl of shariat ordinance. The Association urged the Govt. to refrain from introducing legislation, effecting changes in the existing judicial system having far reaching consequences. They said it will lead to chaos in the existing judicial system.

(8) **Tehrik Nifaz-i-Fiqh Jafaria** [4]

T.N.F.J. resolved on Saturday that no Shariat Bill contrary to the belief of Fiqh-i-Jafaria will be a acceptable to the Tehrik.

(9) **Jamaat-i-Islami.** [5]

(a) Amir Jamaat-i-Islami Qazi Hussain Ahmed has commented unfavourable on shariat revised ordinance recently promulgated by the acting president Ghulam Ishaq Khan.

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(1) DAWN (31-10-1988)
(2) DAWN (20-4-1989)
(3) DAWN (1-7-1989)
(4) DAWN (9-12-1990)
(5) DAWN (9-10-1988)

(b) **Maulana Fateh Muhammad = Amir Jamaat-i-Islami**[1]

The Shariah Ordinance does not conform to the shariah and it has been enforced by the Rulers to save themselves from Accountability. This was stated by Maulana at a press conference here on Friday.

(c) **Senator Prof. Khurshid Ahmed = Naib-Amir Jamaat-i-Islami.**[2]

He has said the shariah ordinance is neither in the interest of the nation nor helps in the enforcement of Islam. He further said that because of shariah Ordinance the nation has come a step back in stead of moving forward towards Islamization. We donot accept shariah Ordinance.

(10) JOINT ACTION COMMITTEE - 13 PROMINENT REPRESENTATIVES POLITICAL -- NON POLITICAL GROUPS.

A convention on the Shariah ordinance demanded the unconditional and immediate repeal of Shariah ordinance and Law of Evidance on grounds that they violatd the 1973 constitution and U.N. Human rights charter.

It was attended by former Supreme Court Judge, Mr. Dorab Patel, Prof. Karrar Hussain, Mr. Jam Saqi, Mr. Aitzaz Hussain, Mr. Iftikhar Gilani, Father Arnold, Mr. Meraj Mohammad Khan, Ms. Asma Jhangir, Mr. Kamal Azfar, Mr. Aslam Azhar, Ms. Zohra Dawoodi - Ms. Naseem Azhar & Ms. Benazir Bhutto.

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(1) DAWN (23-7-1991)

(2) DAWN (8-7-1991)

Mr. Dorab Patel said that Shariah ordinance has destroyed the essential features of the parlimentry system enshrined in the constitution.

Kamal Azfar termed the Laws as crime against humanity.

Ms. Karrar Hussain recorded rejection of the Shariah and Hadood Ordinance saying that it was an insult to Islam to have the religion interpreted by "illiterates".

1. **PAKISTAN TIMES** (1)

Jurist hail shariah Ordinance President Mohammad Zia-ul-Haq has for the first time in the history of Pakistan endeavoured to introduce Islamic Shariat in the country and he intends to establish supermacy of the Islamic Shariat with a view to make Pakistan a model Islamic State gradually.

2. **WORLD MUSLIM CONGRESS**
(Motamar Al-Alam Al Islami) (2)

The speakers at a seminar expressed, unanimity on the enforcement of Shariah in the country and were of the opnion that it was the only way to control and eliminate the increasing evils in the Society.

2A. **MOHAMMAD SALEEM - A CORRESPONDENT** (3)

The enforcement of Shariah ordinance by the President undoubtely was a significant step. It will constitute a milestone in our efforts to turn Pakistan into a truely model Islamic welfare state.

3. **CHANCELLAR OF THE JAMA-L-ULOOM ISLAMIC** (4)

Mufti Ahmed ur Rehman who has devoted his life to religious education said, In a predominently Muslim country, Sunnah and the Holly Quran should be made Supreme Laws of the land. He discribed the Shariah Ordinance as a bold and positive step for realising the process of Islamisation.

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(1) PAKISTAN TIMES (7-7-1988)
(2) DAWN (10-7-1988)
(3) DAWN (11-7-1988)
(4) DAWN (11-7-1988)

In his editorial of Sirat-i-Mustaqeem has opined that all our problem are either the result of ignorance or non practising of Islamic Laws. He said it will enable people to mould their life according to the tenets of Islam.

5. MR. MUSTAFA JAFERI [2]

The promulgation of the ordinance has certainly brought him closer to his ideal of creating an Islamic Society in an Islamic Country through the implementation of Islamisation of the national laws.

6. ULEMA AND MASHAIKH CONFERENCE LANDS ISLAMISATION [3]

The Ulema & Mashaikh Conference which ended on Thursday paid rich Tribute to President General Muhammad Zia-ul-Haq fortaking many solid measures to implement the Islamic system in the Country.

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(1) DAWN (31-7-1988)
(2) DAWN (5-8-1988)
(3) DAWN (13-8-1988)

7. **MR. RAFI ULLAH SHEHAB**[1]

The premlugation of Shariah Ordinance by the President of Pakistan in June 1988 will prove a landmark in the history of Islamisation of our society. But it is strange that a section of our religous - political leaders are trying to confuse the masses especially the women about the implication of this Ordinance. They are giving the impression that the Ordinance will facili..tate the repeal of Muslim Family Law of 1961. According to a news item some of them have already challenged Section 4, 6 and 7 of these laws in the courts.

Such an attitude of our Ulema about the Shariat Ordinance has agitated the mind of women Social Workers who have outrightly rejected the Shariat Ordinance and have declared to start an agitation against it. It is unfortunate that these women are not well versed in the teachings of Islam otherwise their reaction would have been different. It is established that there is nothing un-Islamic in these laws.

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(1) DAWN (9-9-1988)

CHAPTER-3

i Some Islamic Laws though implemented in Pakistan but remained subordin ate to English Law.

ii Choronological order of Shariah enforcement in Pakistan.

iii Six Shariah ordinances enforced - Discussion .

iv The duties of Bar & Bench on implemention of Shariah Law in Pakistan.

In the world of Islam Pakistan maintains the central position as a Muslim State and if Shariat Law is to be enforced here, it could draw the attention of the Muslim world. The public at large, the Scholars, Jusists expressed their view directly or indirectly for the superemacy of Shariat Law over all other Laws but due to unfavourable circumstances nothing could be done practically for its enforcement in Pakistan.

Soon after 1977 the Pakistan Govt. introduced Hadood Ordinance, Zakat Ordinance and some other Ordinances but unfortunately none of these laws were implemented. The Nation remained hopeful of its implimentation till today but nothing concrete has come out sofar.

The English Law is being applied here in every case whether the litigation is within the bound of Islamic Principals or on unislamic ground.

The Honourable Courts and Lawyers are reluctant to put into practice, the Islamic Law. They are reluctant because they have not studied it and have not sofar practised it because they have a little knowlledge of it. They got their degrees in English Law as prescribed in University syllabus. Our prevailing law in Pakistan is English Law & no other Law can take its place till such time it is replaced officially by law enforcing agencies.

Our state being an Islamic Republic State it is imperative to declare by the Govt. of Pakistan through National Assembly that Islamic Law shall be the ONLY LAW of the Country and no other Law shall be promluguted in Pakistan.

Ordinance which are enacted in Pakistan for the time being. The Federal Shariat Court has its own limitation to hear these cases. It is strange to note that the enforced Shariat Ordinance when applied in any Case, only few sections of the enacted ordinances are applied and rest of the Ordinance & its sections remain dormant & not used.

But instead CRPC and PPC are applied in every Court of Law and no use of Shariat Law is in practice in the Hon.ble Courts of Pakistan.

I quote hereunder some instances of Shariat Ordinances which are enacted but are against the spirit of Quranic injunctions.

TALAQ : Section 7 of the Ordinance 1961 is deadly against Quranic Insunctions.

LAW OF PRE-EMPTIONS : It is not being applied correctly and it is not applicable on Urban Areas but applied only on Rural Areas which is against Quranic injunctions.

PURCHASES & SALES OF GOODS : We follow contract Act and Sales of Goods Act of English Law which do not carry the procedure of Quran & Sunna. Similarly the Forward Transactions are carried out according to the prevailing English Law.

WAQF & AUQUAF : It is purely Islamic Law but it is not exercised purely according to Quran & Sunna by our judiciary.

LAW OF EVIDENCE : Efforts have been made to apply this Law in pure form of Islamic Law but it is not being exercised in its true form according to Quranic injunctions. The evidence entirely depends upon the initial Oath. (Such as Before the Statement is recorded of the witness, Oath taking is essential which goes as, he says I bind myself to give the evidence in presence of the Holy Book (Quran) and what I will say shall be truth pure truth and nothing but truth and I shall be cursed by Allah if I tell lie - That is all, there is nothing else to prove that the man appearing as witness is a decoit, criminal, a professional liar etc etc or not, He is according to Quranic Law is unfit to give the evidence.

MORTGAGE : It is not being followed according to Islamic Law, but followed according to English Law.

SOLVENCY/INSOLVENCY : It is being followed under English Law & not according to Islamic Law.

TRUST ACT : The financing companies such as Banks and Investment Companies come under this Act. They are following the policy of RIBA which is un-Islamic. As such we may say that the Trust Act is un-Islamic and should not be used in Pakistan.

HADOOD ORDINANCE :

Enforcement of Hadood Ordinance was introduced in 1979 alongwith other Ordinances (enacted on 10-2-1979). According to these ordinances all the suits in future will be filed in the courts & decided by the Courts as Shariat Courts of Pakistan.

Thousand of cases of different nature under these ordinances were filed inclusive of the cases of Rape, Zina and fornication but not a single instance can be quoted that these caseshave been decided in accordance with Shariat Law. Almost majority of these cases went upto to Federal Shariat Courts where Original charges developed into some other charges and the real culprits were very often set free or a light punishment was awarded to them and instead complainants were punished. (Hadood Ordinance by Asma Jahangir).

DISSOLUTION OF MUSLIM MARRIAGE ACT 1939 :

This Ordinance was revalidated by the legestative of Pakistan in 1961 vide Central Statitute Reform Ordinance 1960. The Purpose of this act was that a married Muslim Woman shall be entitled to obtain a decree of dissolution of Marriage on the grounds hereunder provided :

1. When the Whereabout of husband are not known for period of 4 Years.

2. When the husband neglected maintenance of his Wife.

3. That the husband has married additional wife without the consent of his original wife.

4. If the husband is imprisoned for Seven Years & above.

5. If the husband fails to perform marital obligations for a Period of 3 Years.

It is what the English Law says and Cases of such nature are dicided on the happening of the above grounds. This is all against the Quaranic injunctions .

The question arises, why the Shariat Law which was enacted is not applied fully. The answer is what these Honourable Courts and Legal interpretors cum Practitioners do not bother to raise objection with Govt. of Pakistan for its implementation. They do not play their part to force the Govt of Pakistan for the enforcement of Shariat Law the Real Law enforceable for an Islamic State of Pakistan. On the other hand the Govt of Pakistan also, appears to be disinterested for its implementation probably because of the pressure of the bureaucrates and Land Lords who feel they will be adversely effected if Shariat Law is implemented. The entire nation is governed by oligarchy in the disguise of democracy.

The Govt of Pakistan is also of the same views what the opponents of Shariat Law have. They are Political Leaders, Govt High Officials, some Religious Leaders and above all one of our Ex-Prime Minister who is Tooth & Nail opposing its implementation.

Govt.

To authenticate this adverse attitude for implementation of Shariat Law of the Leaders & bureaucrats the Press Reports of 1987, 1988, 1989 & 1991 could be reproduced in brief hereunder for ready reference :-

NEWSPAPER :-

1. **PAKISTAN PEOPLE PARTY :**

(a) - Men & Women marched High Court to Assembly Chamber protesting against NAFAZ-E-SHARIAT Ordinance.[1].

(b) - Addl. Secretary General Mr. Malik Hakmin Khan PPP said Shariat Ordinance is a Joke with the Nation[2].

2. **JAMIAT-E-ULEMA-ISLAM.**

(a) - They termed Shariat Law as "LAST NAIL in the Coffin of 1973 Constitution".[3]

(b) - Maulana Amir Bijligar at Takhatbai in public Meeting termed Shariat Ordinance as Fraud with the Nation.[4]

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(1) DAWN (3-7-1987)

(2) DAWN (3-7-1988)

(3) DAWN (17-6-1988)

(4) DAWN (6-8-1988)

3. **JAMIAT AHLE-HADITH.** - General Secretary Mr. Shaid Mir said, Jamiat would appose every Shariat Bill.(1)

4. **JAMAAT-E-ISLAMI.**

(a) - Amir-e-Jamaat Mr. Qazi Hussain Ahmed commented unfavourably on Shariat revised Ordinance.(2)

(b) - Professor Khurshid Ahmed said that because of Shariat Ordinance the Nation has come a Step back instead of moving forward towards Islamization.(3)

(c) - Amir Jamaat-Maulana Fateh Mohammed said Shariat Ordinance does not conform to the Shariat it has been enforced by the Rulers to save themselves from accountability.(4)

5. **LAHORE HIGH COURT BAR ASSOCIATION.** - The Bar Association demanded for immediate withdrawal of Shariat Ordinance. They said it will lead to Chaos in the existing judicial system.(5)

6. **TEHRIK NIFAZ-E FIQH-I-JAFRIA.** - Said No Shariat Bill contrary to Fiqh-i-Jafria will be acceptable to the Tehrik.(6)

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(1) DAWN (20-4-1989)
(2) DAWN (9-10-1988)
(3) DAWN (8-7-1991)
(4) DAWN (23-7-1991)
(5) DAWN (1-7-1989)
(6) DAWN (9-12-1990)

7. **JOINT ACTION COMMITTEE.**

13 Prominent representatives of Political and Non Political Group Jointly demanded unconditional and immediate repeal of Shariat Ordinance and Law of Evidence as they violated the 1973 constitution and UN Human Rights Charter. It was attended by former Supreme Court Judge Mr. Dorab Patel & Professor Karar Hussain.

8. **MR. ZAIN SHEIKH.**

- Said revised New Ordinance was a Malafide attempt to subvert the constitutional process.(1)

9. **MR. AITZAZ AHSAN.**

A Politician & Jurist
Said Shariat Ordinance is haphazared and ill considered piece of legislation whose scope is much narrower(2) than what it purports to state.

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(1) DAWN (31-10-1988)
(2) DAWN (17-6-1988)

sub-continent and the Muslin were persuaded to develop a sense of belonging to one another or the basis of a common faith or a common spiritual aspiration rather than a common race, language and territory. Thus when Muslim had developed a national consciousness, they started the struggle for and eventually managed to achieve Pakistan as their home Land.

Quaid-E-Azam Says:-

14.2.48 "Let us lay the foundation of our democracy on the basis of truly Islamic ideals and principles. Our Almighty has taught us that our decision in the affairs of state shall be guided by discussion and consultation". (Speech - Sibbi Darbar - 14th Feb 1948).

25.1.48 No doubt there are many people who do not quite appreciate when we talk Islam. It (Islam) is based on the highest principles of honour, integrity, fairplay, and justice for all. One God, and the equality of man is one of the fundamental principles of Islam. In Islam there is no difference between man and man. The qualities of equality, liberty and faternity are the fundamental principles of Islam. (Address - Bar Association Karachi 25-01-48).

Quaid-E-Azam ambition to bring democracy in Pakistan on the basis Islamic teachings and principles remained incomplete and unfinished and unachieved goal sofar.

I give hereunder in a Choronological order, a brief detail of this incomplete achievement for not forming the Government on the footings of Islamic teachings.

Soon after the birth of Pakistan, there were discussions, debates and discourses to pass a resolution unanimously by the political Leaders representing the people and Government representatives to create an-Islamic State in Paksitan.

12.3.49 It was decided jointly at length by all the parties to pass a resolution for the formation of a Islamic State according to the Islamic teachings and injunctions of Holy Quarn and Sunnah. This responsibility for its preparation was placed on the shoulders of (Late) Maulana Shabbir Ahmed Usmani. Hence the OBJECTIVES resolution was Unanimously passed on 12 03 49. In the resolution, it was established that the sovereignty over the entire Universe belongs to Almighty Alah alone and authority to be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust.

The people of Paksitan were happy and satisfied that an Islamic State based on Islamic Teachings (Holly Quran and Sunnah) will nowbe established in Pakistan.

knowledge of Holy Quran and Sunnah. The board formed included Maulana Mufti Mohammad Shafi, Maulana Zafar Ahmed Ansari and other high level religious scholars. They were asked to prepare a draft of constitution based on Islamic teachings, which was prepared and was announced on 7th September, 1950 for public opinion. The public opined that there is nothing in this draft except that people should have the knowledge in Holy Quran and Sunnah and it is essential for every Muslim in Pakistan. The Nation was not at all satisfied with this draft and it was Ultimately rejected by the people and opposed it tooth and nails for its implementation. It was against the expectation of the people as it was not carrying the real objectives of the teachings of Islam and as requried by the Nation.

This draft was openly criticized by Maulana Zafar Ahmed Usmani, Maulana Ehtasham-Ul-Haq Thanvi and Maulana M.Ismail. The Government was therefore constrained to take back the draft

24.1.51 In January 1951, twenty one religious scholars including DeoBandi, Brailvi, AHLe Hadith and Shia Sect and intellectuals garthered and arranged a Confrence and decided to prepare the fundamental principles for Islamic Constitution for Pakistan. The draft contained 22 points in which, they covered every that point which was over looked and left in the previous drafts for the constitutional Law of Pakistan.

After meditation on the draft a confrence was held under the Charimanship of (Late) Allama Syed suleman Nadvi on 24th January, 1951 and it was Unanimously resolved and agreed to pass this draft for its representation in the comming Round Table confrence.

Maulana Mufti Mehmood was requested to present this draft in the Round Table confrence which was to be held in March 1951 at Rawalpindi.

The following 31 (thirtyone) members were present in the Round Table Confrence:-

Late Allama Syed Suleman Nadvi, Late Maulana Shamsul Haq Afghani, Late Maulana Badr-e-Alam, Late Maulana Ehtasham-Ul-Haq Thanvi Late Maulana Abdul Hameed Budayuni, Late Maulana Mufti Mohammad Shafi, Late Maulana Mohammad Idrees, Late Maulana Kher Mohammad, Late Maulana Mufti Mohammad Hassan, Late Pir Mohammad Amin-Ul-Hasnat Pir of MankiSharif, Late Maulana Modammed Yousuf, Haji Khadim-Ul-Islam, Qazi Abdus Samad Sarbazi, Maulana Azher Ali, Maulana Abu Jaffar Mohammad Saleh, Maulana Raghib Ahsan, Maulana Habib Ur Rehman, Late Maulana Mohammad Ali, Late Maulana Rao Ghaznavi, Late Jafar Hassan Mujtahid, Late Hafiz Kafait Hussain, Late Maulana Mohammad Ismail, Maulana Habib Ullah, Late Maulana Mohammad Sadiq, Professor Abdul Khaliq, Maulana Shamsul Haq, Late Mufti Mohammad Dar, Late Pir Mohammad Hashim, Late Maulana Abul Aala Maudoodi and Maulana Zafar Ahmed Ansari.

Thereupon the public Leaders started going on strikes and created disturbances in the Country due to this long silence of the Government.

22-9-52 In the meantime, the Government formed another committee in 1952 for the purpose of drafting the new Constitution of Pakistan and this committee was named as The Committee of Fundamental Principles. This draft was ready by 22nd of Sept. 1952 and was published for public opinion. The response was very much encouraging. The Nation celebrated constitution week through out the Country in November, 1952.

But the draft was not finalized because certain other suitable amendments were required to be made in it before it is placed for approval in the constituent Assembly. It was postponed for another month. Ultimately it was published on 22nd of Dec. 1952.

11-01-53 The religious scholars, political leaders once again held the meeting on 11-1-1953 for its review but they prepared the draft quite suitable and favourable for the nation and it was quite near to the expectations which covered all the 22 points given by them in their proposal.

They declared jointly that the draft is much better than report of 1950..

This was presented in the constituent Assembly for approval.

Mr. Mohammad Ali Bogra, the then Prime Minister of Pakistan stopped its approval temporarily and requested to act upon the old Act of 1935 as enforced by the Govt. of India during British Raj.

This was another disappointment given by the ruling party to the Nation. It was sternly opposed by the people but produced no fruitful results for its approval.

CONSTITUTION OF 1954 The Constituent Assembly was again in 24-10-54 session in 1954 during Mr. Mohammad Ali Bogra's Prime Ministership but nothing was materialized in Country's constitution-making, during his period and instead the Assembly was dissolved on 24-10-1954.

May,1995 It was very difficult to go in for General Elections immediatly to reconstruct the Constituent Assembly or form the Government. Therefore some suggestions made by Experts to elect members from provincial Assemblies of East & West Pakistan for constituent Assembly. They advised that Provincial Assemblies members who secured majority votes in the election be selected for constituent Assembly Membership and thus by this process, a new constituent Assembly was created and it started its functions in May 1955.

Islamic Republic of Pakistan, whose head of the State will be Muslim and follow the injunctions of Holy Quran and Sunnah. Anything against the injunction of Islam shall not be followed. The Objectives resolution was the foundation stone for the constitution of Pakistan.

OCTOBER,1958 MARSHAL LAW. On 8th of October 1958, Mr Sikandar Mirza the then President of Pakistan repealed this constitution of Pakistan of 1956 and dissolved the Ministry of Malik Feroze KLhan Noon. General M. Ayub Khan was appointed a Chief Marshal Law Administrator. The annulment of the constitutution 1956 was a great loss to the Nation which took nine years to make it. General Ayub Khan declared Marchal Law during his reign.

Constitution of 1962. A new draft of the constitution was prepared after forty four mmonths. It was reviewed by committee headed by Justice Shahab Uddin but it was rejected by the constituent Assembly. Another draft was prepared again and was introduced and enforced as an ordinance in the Country.

25-3-69 On 25th of March 1969 General Mohammed Ayub Khan transfered his power to General Mohammed Yahya Khan who was the then Commander-in-Chief of the Pakistan Army and was made Head of the State.

1970. General Mohammed Yahya Khan Made arrangements for the General Election for the Purpose of transfering the power to the elected body. Pakistan People Party being in Majority was elected in West Pakistan and Pakistan Awami Party Won the election in East Pakistan.

1971 Soon after these electioins East Pakistan was separated and it declared its independence, announcing, that it is not now the part of Pakistan but an independent territory and will be named as Bangla Desh.

20-12-71 On 20th of December 1971 Late Zulfiqar Ali Bhutto took over the charge as Prime Minister of West Pakistan on the basis of Majority of Votes in the General Elections. He was declared as Chief Marshal Law Administrator of West Pakistan.

it was declared as the constitution of Islamic Republic of Pakistan 1973 Since then no other constitution has so far been revised or enforced. The constitution of 1973 is now our constitution and being followed till to day.

MARSHAL LAW

5-7-1977 On 5th of July 1977 once again Marshal Law was clamped. The work on Shariah (Law) to be implemented in Pakistan was in full swing because it was the wish of the Nation to live under Shariah (Law) and not under English law, which is a man-made Law. The public plea is that our state is a Islamic Republic of Pakistan being Muslim, our State Law should be based on Islamic teachings and be according to the injunction of Holy Quran and Sunnah. In the meantime a body called the Councl of Islamic deology was made who were given the responsibility to work on Shariah and was asked to prepare a report for submission to the Government for its approval. The Conucil did its best and played a very important Role in framing the Shariah for Pakistan. The report was prepared and presented to the Government but nothing has come out so far for its enforcement.

10-02-79 The matter has gone into cold storage, but for the little bit satisfaction of the public, six Ordinances were enforced on 10-02-1979 by the Government of Pakistan declaring that Shariah has been implemented in Pakistan.

The Government also announced four Shariah Courts one in each Province who will decide cases under Shariah.

27-05-1980 On 27th May, 1980 the Government established Federal Shariah Court with its Head Office at Islamabad.

It is to be pointed out that the following six ordinances though promulgated but are being used very rarely by the honourable courts. The English Law is prevailing through out Pakistan and Shariah Ordinances are partly used by the Honourable Courts. The ordinances are:-

1. The Offence against Property Ordinance (Enforcement of Hadood) 1979-VI.
2. The Offince of Zina Ordinance (Enforcement of Hadood) 1979-VII.
3. The Offence of Qazi Ordinance (Enforcement of Hadood) 1979-VIII.
4. The Execution of purishment of whipping Ordinance, 1979-IX.
5. The Zakat and Usher Ordinance 1980-XVIII.
6. The Prohibition (Enforcement of Hadd) order 1979 No. 4 of 1979.

Muslim Ummah to re-discover the true meaning of Islam in the present context and to re-construct Society by drawing primarily upon its own risk, but neglected religio-culture sources. This situation has posed a challenge to Muslim intellectuals that they should explain the nature of the above mentioned attempt and provide guidence in developing a methodology to be adopted for achieving the Goal. They must also point out the stages of the work as well as the problems and challenges to be faced in the way. (Enforcement of Shariah in the present Context by Dr. M. Akhtar Saeed Siddiqui).

'IEWS OF EXPERTS FOR SHARIAH ENFORCEMENT.

hariah bill 1986 The nation is faced with a challenge such as it has not faced so far in its short history of 43 years. The private Shariah bill has been passed by the senate without any discussion and debate. A number of amendments to the bill were moved by the Federal law Minister but he preferred to pay a State Visit to CHINA rather than press__ Ammendments tabled by him when the bill was taken up in the senate.

In his absence the proposed amendments held through and by a Voice Vote the Shariah bill was passed. It is now before the National Assembly for approval (A Analysis of Shariah Bill 1990- Mr. Mohammed Yaqoob Ali Retired Chief Justice of Paksitan).

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The Private members Shariah bill can not even be taken into consideration by the National Assembly or the Parliament in joint session as it is flagrantly violative of the constitution of the Islamic Republic of Paksitan.(Shariah bill violative of Constitution Seminar held on 29-7-90.

Mr. Khursheed Hasan Mir, a former Federal Minsiter, Poet and Lawyer, speaking with his characteristic, farsightedness, pointed out that the members of senate who passed the bill risked the mischief of Article-6 of the constitution.

Prof. Raifullah Shehab, a leading religious Scholar and writer, Dr. Faqeer Hussain of Peshawar University, Mr. Hanif Ramay Ex-Chief Minsiter of Punjab, Mr. Ashfaq Saleem Mirza and Dr. Abdul Khaliq, a former PUnjab Minsiter in their speeches deprecated the shariat bill as indefensible on constitutional, religious, legal, ethical and political gorunds.

That the compilation highlighted the unconstitutionality of the propsed "Enforcement of Shariat Act 1990 adopted by the senate on May 13, 1990. The National Assembly was dissolved (on August, 6, 1990) before it could take it up. Had the National Assembly not endorsed it within ninety days under article-70 of the const-itution, it would have had to be taken up in joint session of the two Houses of Parliament, if so requested by the House in which it originated. On the dissolution of Assembly, being a "Private Members bills" it lapsed. It has since, been reintroudced in the Senate. (Pakistan Forum-Islamabad.)

implemented sofar. Why so is a question to be discussed and causes of its non implementation are to be found out.

By my survey and research work which I conducted in this connection, I visited the Group of People of all walks of life in order to find out the causes of delay and their indirect refusal for the implementation of Shariah Law in Pakistan. For the sake of having a first hand knowledge ofthis refusal, or the unending delay and for determining the factors wether it was delibrate or inadvertant attempt which made the Government of Pakistan incapable for the implementation of Shariah Law in Pakistan, I approached all the parties whom I will discuss later.

Innumerable meetings were held at National Assembly level but with no results.

This gives us some indication that there is something fishy somewhere at Government level or with members of the National Assembly who are creating hinderances in the way of enforcement of Shariah Law in the country.

I will try to sort out the causes of failure with the help of the evidence collected by me through my personal contacts with certain Group of people such as :-

1. Govt. of Pakistan - Ministry of Religious Affairs.
2. Political Parties.
3. Ulema and intellectuals of the contry.
4. Jurists and Legal Paractitioners.
5. Religious Heads.
6. Journalists.
7. Selected persons from Public at large.

During the period of late President Zia-ul-Haq and according to information collected from newspapers - Magzines and public version, the enforcement of certain enactments were made by dint of the personal efforts and interest of the said late President Zia-ul-Haq. These acts are six in numbers and their pramlugation came into effect from February 1979, such as :-

1. The offences against property ordinance (enforcement of Hadd) ordinance 1979 VI of 1979.

2. The offence of Qazi Ordinance (Enforcement of Hadd) ordinance 1979 - VIII of 1979.

3. The offence of Zina ordinance (enforcement of Hadood) ordinance 1979.

4. Execution of Punishment of Whipping ordinance 1979 - IX of 1979.

5. The Zakat and Usher ordinance ordinance 1980. XVIII of 1980.

6. The prohibition (enforcement of Hadd of 1979).

The latest enforcement is the ordinance of Qisas and Diyat of 1990 and pramlugated by our present - President Mr. Muhammad Ishaq Khan. Hectic efforts are under way for its implementation, but nothing concrete has come out sofar.

Similarly the Islamic evidence act which is said to be a complete and perfect act for application in the Court of Law in Pakistan having no lacuna in it has been enforced and applied in all courts of law in Pakistan.

The said evidence act which was enforced, quite a good number of debates, conferences and discussion there on were carried out particularly on TAZKIA-TUSH-SHAHOOD. According to the practicing lawyers and Jurists, TAZKIA-TUSH-SHAHOOD (An analysis and procedure to give an evidence) has

rules as contained in this act. It has its tight limitation for giving an evidence in every case. The honourable judges would refuse to take evidence because the person who appeared as witness could not possibly qualify himself as a witness under the act due to such limitation.

They say that the act has impracticable conditions for a witness which he has to qualify as a witness. If any of the conditions is not fulfilled, he is said to be unfit to be called a witness in the court of law.

Hence as they say it, no muslim in Pakistan can give an evidence in the court of law because of inflexibility of clauses of this act.

The difference of opinion of lawyers, jurists and judges for Evidence Act appears to be vague and not meaningfull. Whatever is prescribed in the Holy Quran and whatever was the practices of our Holy Prophet (PBUH) must be put into practice, and no amendment can be made in it. It is a Divine Law & not man made Law which changes with the wishes of every change of new Government. God giver Law is to be applied in the Islamic State in which no addition or substraction and substitution is allowed. Whether the law is rigid or infexible has to be implemented and enforced.

The legal circle of our country have studied the man made law and they qualified it for practice. All legal decisions are being awarded according to the man made law. They can not think beyond the knowledge of their study what they possess. It is pity to note that they have the least knowledge of the Divine Law and they never took any interest to study it during their life in practice or as a judicial person. Now when the need to enforce Shariah Law in Pakistan has come up they are hesitant to accept it as Law of the land, but in stead opposed it for its application or to recognise it as Law of the country.

An ignorant person who does not know the Law of his country is bold enough to refuse its acceptence and commits crime without any fear and takes advantage of his ignorance and falls prey to a crime and ultimately punished. Similar case could be attributed to our practicing lawyers and jurists who are well versed in man made law but are ignorant of Divine Law. Advertantly or inadvertantly, they donot want to accept it and apply the same in the cases before them and do not show any interest for its implementation. They are punishable before the Almighty.

Hence they are inviting the wrath of God for such disobedience.

The reality is if they are sincere to themselves and to their faith as muslim, they would have been bold enough to accept and apply it in Pakistan. They could remove the bottle necks if there is any which come into their way for its application in Pakistan. They are the people who can break the Ice and compel the Govt. of Pakistan to introduce the Shariah Law in Pakistan suggesting them the ways & means in favour of its application in Pakistan. If such supports is forthcomming from them, Govt of Pakistan will be encouraged and it will definitely make an easy task for the Govt. to enforce it. Encouragement from country's legal circle could prove a big support to the Govt.

The Council of Islamic Ideology was formed by the Govt. of Pakistan in 1962 and reorgnised on 31st May, 1981. The Council was advised by the President of Pakistan to Comment on Shariat Bill presented in the National Assembly & prepare a report for the implementation of Shariat Law in Pakistan and give their opinion for its enforcement within the frame work of the injunctions of Quran & Sunnat.

The Council with its vigorous efforts prepared the report & presented the same to the President of Pakistan. The following were the subjects taken up by the Council of Islamic Ideology. The Subjects touched by the Council of Islamic Ideology were :-

(1) (QANOON-O-ADL) Law & Justice.

(2) The present Judicial System and Islamic Judicial system.

(3) The Role of Judges & Lawyers in the Islamic Legal System.

(4) Conformance in Present Legal System & Islamic Judicial System.

(5) Procedural Notes.

(6) All other aspects were studied & suggestion were given by the Council for paving the way for the implementation of Shariat Law in Pakistan.

Lot of suggestions were made by the Council under the heads mentioned here above but Govt of Pakistan remained silent and no action was taken by the Govt so far. The Council repeatedly brought to the notice of Govt of Pakistan for the necessary amendments required to be made in the Shariat Bill and also gave valuable suggestions required in the implementation of Shariat Law but to the dismay of Council no heed was paid by the Govt and the Council of Islamic Ideology Suggestion remained ineffective. This attitude of the Govt encouraged all the opposition sector to oppose the Shariat Bill introduced in the parliament.

The News papers were now bold enough to fill up their papers with criticism against the introduction of Shariat Law in Pakistan as I have mentioned in the previous Chapters.

What were remarks of the President of Pakistan vide report of the Cabinet Division of Govt of Pakistan bearing its No. 8/349/80 imp. dated 9th June, 1980.

(Page 39 Islami Nizam-e-Adl).

He said "That the question raised by many people is whether your existing Judicial System can be changed according to the tenets of Islam. What is the place of Lawyers and judges in this system, and what steps are required to bring our existing system in consonance with the Islamic Ideology so that it may examine these aspects & give without delay its final opinion on these points :-

The Council of Islamic Ideology in reply of the remarks of the President of Pakistan reported and eloborately discussed the importance of the introduction of Shariat Law in Pakistan. The Council discussed in details the duties of Judges & Lawyers required to be discharged in Islamic Republic of Pakitan.

DUTIES OF JUDGES UNDER SHARIAH LAW :-

(1)

(And let not hatred of any people seduce you that ye deal not justly. Deal justly that is next to piety).

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(1) QURAN AL-MAIDA (5:8-9)

فَاَصۡلِحُوۡا بَیۡنَہُمَا بِالۡعَدۡلِ (1)

" MAKE PEACE BETWEEN THEM JUSTLY"

1. A Judge must posses a thorough knowledge in Islamic Law & be well versed in Quran & Sunnat.

2. To decide the Case on merits.

3. To do Justice with the Innocent party and to punish the party at fault.

4. To interpret the Law correctly according to the injunction of Quran & Sunnat.

5. The Law which is difficult to interpret by the Judges be placed before Mujtahidin who are well versed in Quranic Law. The verdict should not misrepresent the Quranic injunctions.

6. Judge should be a Momin & God fearing man.

" Law Rules through the utterance of Judges ".

" Adl (Justice) carries the same attributes in Islam what Salat (Prayer) Carries its values in din-e-Islam.

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(1) QURAN AL-HUJURAT (49-9)

In the administration of Justice the lawyer's role is very important in collaboration with the Jury. Their right representation in every case helps the Judges to decide the cases rightly with justification. The complainant or the respondent as the case may be, receive the best judgments based on fact of the case as interpreted by the lawyer.

If the lawyers twist the cases in order to prove the wrong as right and represent the case in the court to prove his malafide arguments as right will therefore misguide the Judges and by his impresive wrong arguments may make the Judge to decide the case in the favour of a wrong party. This will be an act of dishonesty in discharge of his duties on the part of Lawyer.

In short the Lawyer is considered to be a honest Court Officer in the eyes of Law. His statements submitted in the Court of Law are considered to be true statement of facts on which judges of the Court depend for deciding cases. If the statements & arguments given by the Lawyers are defective and untrue, the decision of Court could also become incorrect. One of the parties of the Case will therefore be adversely effected.This is a sin in Shariat Law.

The Lawyer role therefore is very important to conduct the cases under Shariat Law.

Duties of a Lawyer under Shariat Law will be :-

1). To help the Court of Law for the Cases under hearing for want of correct Judgment which could only be possible when the case is honestly represented by the Lawyers.

2). To help the Court in the correct interpretation of Law.

3). To refrain from presenting the false cases and he should discourage such complainants who file false suits.

4). To oppose the culprit in the Court and give full cooperation to the geniune party (Complainant or defendant).

5). To fight tooth & nail and get real justice for the geniune party.

6). To become a popular lawyer among his collegues and public at large for his honesty in his profession, as well as in his social and moral duties.

(1)

(Donot fight for dishonests)

DEMERITS :- Legal profession is in itself a honourable profession but certain lawyers in the greed of heavy Fee offered to them go out of the way of their honourable profession & accept false cases and fight against the genuine claims and they try their utmost to win it by false respresentation & file false documents & statements in the court of law

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(1) QURAN AN-NISA (4:105)

to justify their fraud and some time the dicision are made in their favour on the basis of their false documentation and statements offered before the honourable Judges. In Shariat Law it is forbidden and is a great sin (گناہِ کبیرہ).

These Lawyers also get such false cases in large quantity beyond their capacities and could not attend physically in all the cases on due dates and they apply for adjournments in the Court and delay the cases and use delaying tacts for avoiding the decision when they find they have no sound grounds to win it. By this dishonest act, the geniune party suffers because the justice in delayed. "Justice delayed is Justice denied". This is a sin ir Shariat Law.

When a lawyer comes to know before taking up a new case for litigation that the case looks to be based on untrue facts, he should refuse to take up such cases and discourage the party to file such a false case in the Court and similarly all the lawyers to whom such cases are refered, they should refuse, and should not file in the Courts which is sacred place of Justice. Under Shariat Law such courts are most sacred places where the law of God is interpreted in the best of humunity interest and cases are decided under the Quranic injunctions.

: Re-Orientation of Legal Studies.

The Advisory Council of Islamic Ideology feels the necessity of a strong group of such intellectuals in this country who are not only brilliant in the knowledge of Modern Jurisprudence and laws but they are gifted scholars of Muslim jurispredence and also of the sources and details of the past and contemporary Muslim Laws.

The council recommends to the Govt of Pakistan that it should direct the Universities of the country to revise their syllabi of Law for meeting the ideological requirements of the nation and for this purpose stresses the importance of immediate initiation of specialised studies and research in the Muslim Law at the postgraduate stage of the education and grant of liberal Scholarship for attracting talent to this field of utmost national importance.

- Report Islami Nizam-e-Ale (Urdu) - Islamabad - Printing Corporation of Pakistan Press - Islamabad - 1984 (Council of Islamic Ideology) Page 209

Chapter - 4 (i)

Inter Views With
Govt' of Pakistan
Law enforcing Agencies

موضوع گفتگو سوال یہ ہے ۔ کہ پاکستان میں قانون شریعت کا نفاذ آپ کی رائے میں اب تک کیوں عمل میں نہیں آیا۔ اس کے ذمہ دار کون ہیں ۔

۱۔ آیا حکومت ہے ۔ ۲۔ سیاسی جماعتیں ہیں

۳۔ قانون کے منصف ہیں ۴۔ میشران قانون ہیں

۵۔ ملک کے دانشور ہیں ۶۔ عوام ہے

۷۔ علماء دین ہیں

ہر قانون جو بل کی صورت پارلیمینٹ میں پیش ہوتا ہے اکثریت کی حمایت حاصل کرنے پر وہ بل قانون ملک کی صورت اختیار کرلیتا ہے اور آخری مرحلہ مجلس شوریٰ میں پیش ہوکر اکثریت کے بل بوتے پر یہ منظوری حاصل کرکے ملک کا قانون بن جاتا ہے ۔

پاکستان میں انتخاب کی مہم امراء کا کھیل ہے ۔ غریب کے پاس اتنا پیسہ نہیں ہوتا اور نہ وہ اس کا انتظام کر سکتا ہے کہ انتخاب لڑے ۔ آج تک پاکستان میں امیرلوگوں نے ہی انتخاب لڑا اور جیت کر وہی وزراء اور ممبران پارلیمینٹ بنتے ہیں۔ اسے امراء کی حکومت سمجھیں' جاگیردای نظام حکومت سمجھیں۔ دونوں ایک ہی ہیں اور ان کی حکومت آج تک چل رہی ہے صرف آدمی بدل جاتے ہیں یعنی نئی بوتل پرانی شراب ۔ وزراء بھی یہی ہیں اور پارلیمینٹ کے ممبران بھی ۔ اختیارات ان ہی میں بٹ جاتے ہے اور حکومت کی داغ بیل ڈال دی جاتی ہے ۔ چونکہ اکثریت ان کی ہوتی ہے ان کے مفاد کے خلاف کوئی بل پاس نہیں ہوسکتا۔ ان کے مفادات قوم کے مفادات نہیں ہوتے بلکہ ان کے ذاتی یا گروپ کی ہوتے ہیں ۔

چونکہ شریعت بل آج تک جب بھی پیش ہوا وہ کبھی پاس نہیں ہوا۔ اور اس کا نفاذ پاکستان میں ناممکن ہوکر رہ گیا۔ جب سے پاکستان بنا ہے یہی کہانی چلتی رہی ۔ اور شریعت بل پہلے مرحلے پر پاس ہوتے رہے اور آخر میں نامنظور ہوتے رہے ۔ اس لئے کہ جاگیردار کبھی نہیں چاہیں گے کہ ان کو جاگیر چھن جائے اور قانون شریعت کے مطابق اتنی اپنے پاس رکھیں جتنی شریعت میں اجازت ہے ۔ اسی طرح امراء اپنی جائیداد کے بموجب کسی ایسے قانون کی حامی نہیں بھریں گے جو ان کی جائیدادوں میں ٹیکس کی صورت میں یا زکواۃ کی صورت میں اثر انداز ہو۔ اور تقسیم جائیداد جو قانون شریعت نے دیا ہے کے حامی ہوں۔ اس لئے وہ قانون شریعت کے ہمیشہ خلاف ہی رہیں گے اور کبھی بھی ملک میں نافذ نہیں ہونے دیں گے ۔

سیاسی اور مذہبی جماعتیں اپنے اپنے مسلک پر ڈٹی بیٹھی ہیں اور اسی کو درست سمجھ کر ذرا سی اپنے مسلک

یں ہوں ۔ یہی ہے

۱۔ شعیہ مذہب کے مسالک اپنے میں

۲۔ دیوبندی گروپ کے مسالک اپنے میں

۳۔ بریلوی گروپ کا اپنا مسلک ہے

۴۔ اہل حدیث گروپ کا مسلک اپنا ہے

اسی طرح دیگر مذہبی جماعتیں اپنے اصول قواعد وضوابط کو سامنے رکھ کر حکومت کے شریعت بل ۔
موزانہ کرتے ہیں ۔ بل اگر ان کے بنائے ہوئے اصول یا اعتقادات کے منافی ہے تو بل کو رد کرنے میں
آواز بلند کریں گے اور ووٹ اس کے خلاف دیں گے اسی طرح موجودہ سیاسی جماعتیں اور بھی ہیں :
Seculer نظام کو پسند کرتی ہیں ۔ اس کے حامی ہیں اور وہ خدائی قانون کے خلاف ووٹ دیں گی

اسی طرح قانون دان اور انصاف کرنے والے جج صاحبان جو ایک ہی لڑی کے موتی ہیں دونوں طے
انگلش لاء (Man-made-Law) کے ماہر ہیں ۔ اسی پر وثوق کیساتھ بحث کر سکتے ہیں اور فیصلے دے سکتے ہیں
اور حوالہ جات کے مقدمے کے فیصلے پیش کر کے حسب منشاء فیصلے لے سکتے ہیں لیکن افسوس یہ ہے کہ ان
قانون شریعت سی کوئی دلچسپی نہیں ۔ نہ ہی اس کا گہرا مطالعہ ہے اور نہ ہی کرنا چاہتے ہیں ۔ یعنی نہ وکلا
اور نہ جج صاحبان اس لئے نفاذ شریعت کے یہ لوگ بھی بالکل حامی نہیں ہیں ۔ اگر یہ لوگ خدا کے قانو
کا احترام کرتے ہوئے دلچسپی لیں ۔ اور اس کے نفاذ میں زور دیں تو بھی اس کے نافذ ہونے میں کا
امکانات پیدا ہوسکتے ہیں ۔

علمائے دین کی خواہش ضرور ہے کہ نفاذ قانون شریعت پاکستان میں ہو لیکن پارلیمنٹ میں تعداد کی کمی
وجہ سے ان کی آواز اکثریت میں دب جاتی ہے یا دبا دی جاتی ہے ۔ ان کی کوشش کے باوجود نفاذ نہیں
ہوسکتا ان حالات کے پیش نظر قانون شریعت کا نفاذ ناممکن ہے اور اب آڑتالیس سال گزر چکے ہیں اسلا
مملکت میں اسلامی قانون کی کوئی اہمیت نہیں اور نہ لاگو ہوسکتا ہے ۔

رہے عوام تو ان کی وہی رائے ہے جو ان کے لیڈروں کی رائے ہے ۔

☆ ○ ☆ ○ ☆

اسلامی حیثیت سے دستور کا دوسرا اہم مرحلہ قانون سازی کے صحیح اصول کا تعین ہے۔ دستور کے اندر اس بات کی مکمل ضمانت ہونی چاہئے کہ ملک میں کوئی قانون یا انتظامی حکم قران وسنت کے خلاف نہ منظور کیا جاسکے گا۔ اور ملک کے تمام خلاف اسلام قوانین کو بدل کر قران وسنت کے مطابق بنایا جائیگا

لیکن گزشتہ تئیس سال کا تجربہ بتاتا ہے کہ جو عناصر پاکستان میں اسلام کو ختم کرنے کے درپے ہیں۔ اور یہاں صحیح اسلامی قوانین کے نفاذ کو اپنے مفادات کے خلاف سمجھتے ہیں۔ وہ کھل کر یہ تو نہیں کہہ پائے کہ ملکی قوانین کو اسلام کے مطابق نہ بنایا جائے۔ اس لئے ان کی کوشش ہمیشہ یہ رہی ہے کہ دستور میں کچھ ایسے چور دروازے رکھ دیئے جائیں جن کے ذریعے اسلام کا نام تو باقی رہے لیکن عملی زندگی سے اس کا واقعی رابطہ بالکل کاٹ دیا جائے اور اس طرح اسلام کے نام پر وہ سب کچھ کیا جائے جو ان کو خواہشات کے مطابق ہو اس مقصد کے لئے اب تک مختلف دستوری مسودات میں کچھ چور دروازے رکھے گئے ہیں جن کا ذکر طویل طلب ہے۔

ایسی مسودات کی تجویز یہ تھی کہ اگر کسی قانون کا قرآن وسنت کے مطابق ہونا مشتبہ ہو تو اس کا قطعی فیصلہ سپریم کورٹ کرے گی کہ وہ واقعتہً قرآن وسنت کے مطابق ہے یا نہیں۔

یہ طریق کار اصولی طور پر تو درست ہے۔ لیکن اس میں عملی مشکل یہ ہے کہ سپریم کورٹ کے موجودہ جج صاحبان رائج الوقت قوانین میں خواہ کتنا وسیع وعمیق علم رکھتے ہوں لیکن وہ اسلامی علوم سے یا تو ناواقف ہیں یا کچھ سرسری علم رکھتے ہیں۔ ظاہر ہے قرآن وسنت سے قوانین کا استنباط ایک عظیم الشان کام ہے جس کیلئے عربی زبان وادب۔ تفسیر۔ حدیث۔ فقہ اور کلام کے مفصل علوم سے باضابطہ واقف ہونا ضروری ہے اور اس کام کو وہی لوگ انجام دے سکتے ہیں جنھوں نے اسلامی علوم کی تحصیل میں اپنی عمریں کھپائی ہوں اور قرآن وسنت کو سمجھنے کیلئے اپنے شب و روز وقف کئے ہوں۔

اب اگر اس ملک میں اسلامی قانون کو نافذ کرنا ہے تو اس کی قابل عمل صورت صرف دوسری ہے اور وہ یہ کہ اختلافات کو قانوناً تسلیم کرکے اس طرح قانون سازی کی جائے کہ اس میں تمام فرقوں کے مسلک کی مکمل رعایت ہو اور یہ کام کسی بھی معنی میں مشکل نہیں ہے۔ اس لئے کہ جہاں تک دستوری مسائل کا تعلق ہے ان میں مختلف مسلمان فرقوں کے درمیان کوئی اختلاف نہیں ہے

۱۹۵۱ میں اکتیس علماء کا جو تاریخی اجتماع کراچی میں ہوا تھا اس میں شیعہ سنی۔ دیوبندی۔ بریلوی۔ اہل حدیث ہر مکتب کے مستند علماء دین شامل تھے۔ انہوں نے جو دستوری سفارشات متفقہ طور پر مرتب کرکے پیش کی تھیں ان میں آج تک کوئی اختلاف نہیں ہوا۔ ان فرقوں کا باہمی اختلاف صرف قانونی جزئیات میں ہے۔ اور اس اختلاف کا نمایاں آسان علماء کی اسی اجتماع نے متفقہ طور پر تجویز کیا تھا کہ ملک کا عام قانون تو اس فرقے کے مسلک کے مطابق بنایا جائے جس کے افراد یہاں زیادہ تعداد میں پائے جاتے ہیں اور دوسرے فرقوں کیلئے ایسے الگ الگ شخصی قوانین بنا۔

ی

قوانین میں یہ تفریق آج بھی موجود ہے اور عدالتیں ہر فرقے کے شخصی قوانین کا فیصلہ آج بھی اسی کے مسلک کے مطابق کرتی ہے۔

اسی تفصیل کو ذہن میں رکھ کر فیصلہ کیجئے کہ کیا واقعی مختلف مسلمان فرقوں میں اختلاف کا وجود اسلامی قانون کی راہ میں کوئی ایسی رکاوٹ ہے جس کا خوف ذہنوں پر طاری کر کے ہاتھ پر ہاتھ رکھ لئے جائیں؟ اور اپنی تعمیر و ترقی کے بہترین بیس ۲۰ سالوں میں اس خوف کا اظہار کرنے کے سوا کوئی اور کام نہ کیا جائے؟

(ضیا الحق صاحب)

آخر میں صدر محترم نے علماء کرام کو دعوت دی ہے کہ وہ مل جل کر ملک کیلئے قانون کا ایسا مسودہ تیار کریں جو تمام فرقوں کیلئے قابل قبول ہو۔

کوئی شک نہیں کہ اسلامی قانون کی تدوین کا صحیح راستہ یہی ہے کہ مختلف الخیال علماء اور قانون دانوں کا ایک اجتماع سر جوڑ کر بیٹھے اور پوری محنت۔ دیانت اور خلوص کے ساتھ اس مبارک کام کو پایہ تکمیل تک پہنچائے۔ ہمارے لئے یہ باعث مسرت ہے کہ صدر محترم نے اس کام کیلئے بالکل صحیح طریقہ تجویز فرمایا ہے۔ لیکن ایک بات ہماری سمجھ سے بالا تر ہے اور وہ یہ کہ ایک جناب صدر اسلامی قانون سازی کا صحیح طریقہ ہی سمجھتے ہیں کہ علماء دین اور قانون دان حضرات اپنی مشترکہ کاوشیں اس کام پر صرف کریں مگر دوسری طرف قومی سطح پر جو ادارے اس کام کیلئے سرکاری طور پر ادارہ تحقیقات اسلامی کو پیش کیا جاسکتا ہے۔ بنیادی طور پر اس ادارے کا مقصد وجود ہی یہی ہے کہ وہ ملک کیلئے اسلامی قانون کا مسودہ تیار کرے۔ سالہا سال سے قومی آمدنی کا لاکھوں روپیہ اس پر صرف کیا جارہا ہے۔ قانون سازی کیلئے جن وسائل کی ضرورت ہے وہ کم وبیش اس کو کئے گئے ہیں لیکن کیا اس ادارے میں کوئی ایسا عالم دین بھی ہے جس کے علم وفضل اور اسلامی قانون میں مہارت اور دیانت واخلاص پر قوم کو اعتماد ہو۔

ظاہر ہے کہ مسودہ قانون کرنے کا کوئی کام ایسا سرسری کام تو نہیں ہے کہ چند علماء چند نشستوں میں مل بیٹھیں اور مہینے دو مہینے میں ایک مجموعہ قانون تیار کر کے پیش کر دیں اس کام کیلئے وسیع وسائل سخت محنت اور طویل فرصت کی ضرورت ہے۔

اب جناب صدر انصاف فرمائیں کہ ملک کے جتنے وسائل اسلامی قانون بنانے کے اہم کام پر صرف ہوتے تھے وہ تو سارے کے سارے ادارہ تحقیقات اسلامی اور مشاورتی کونسل کے اداروں پر خرچ ہورہے ہیں ان اداروں کو تو ملک کے مقبول معتمد علماء دین کے سائے سے بھی پوری احتیاط کیساتھ بچایا گیا اور دونوں سرکاری ادارے جن پر قوم کا لاکھوں روپیہ سالانہ خرچ کیا جارہاہے گیارہ سال کے عرصہ میں ابھی تک چالیسواں حصہ بھی مکمل نہیں کرسکے اس کے بعد علماء سے یہ مطالبہ کہ اس اہم کام کو تنہا اپنی ذاتی ذمہ داری پر انجام دیں۔ علماء دین اور ماہرین قانون کو خود جمع کریں' وسائل خود مہیا کریں۔ ادارے خود بنائیں۔ اجتماعات خود بلائیں۔ غرض حکومت کے کرنے کے سارے کام خود

بیٹے

ہیں تو اس کو کیا ضمانت ہے کہ سالوں کی جانفشانی کے بعد جو مسودہ قانون یہ حضرات بنا کر پیش کریں گے۔ اس کا حشر وہی نہیں ہوگا جو ۱۹۵۱ء کی دستوری سفارشات کو ہوا تھا؟ اس موقعہ پر علماء نے حکومت کی کسی ادنیٰ امداد کے بغیر ہر مکتب فکر کے نمائندوں کو کراچی میں خود جمع کیا وسائل خود مہیا کئے سفارشات خود مرتب کر کے حکومت کو پیش کیں۔ صرف ملک نہیں بیرون ملک بھی ان سفارشات کو عوام کی سرگرم تائید وحمایت حاصل کی۔ لیکن کیا حکومت کے کسی فرد نے ان سفارشات پر دستخط کرنے میں فخر محسوس کیا؟۔ اگر نہیں یقیناً نہیں۔ تو قانون سازی کا یہ کام جو دستوری سفارشات سے سیکڑوں گنا زیادہ دیر طلب اور مشقت طلب ہے علماء آخر کس بنیاد پر اس کا بیڑا اٹھائیں ؟

کسی کوتاہی کی ذمہ داری ایک طرف سے دوسری طرف منتقل کرنے کی بات تو الگ ہے لیکن اگر واقعتہً صدر محترم کی خواہش یہ ہے کہ پاکستان میں اسلامی قانون نافذ ہو۔ اور کوئی وجہ نہیں ہے کہ اس معاملے میں کسی بدگمانی سے کام لیا جائے۔ تو اس کا راستہ اس کے سوا کچھ نہیں ہے کہ حکومت اپنے وسائل پر مسودہ قانون مرتب کرنے کیلئے ایک ادارہ قائم کرے اور سابقہ اداروں کی ناکامی سے سبق لیکر اس میں مندرجہ ذیل امور کا پوری اہمیت کے ساتھ لحاظ رکھا جائے (۱) ادارے میں ہر مکتب فکر کے ممتاز علماء دین جمع کئے جائیں۔

(۲) ہر مکتب فکر کے ایسے علماء ہونے چاہیئں۔ جو اپنے علم وفضل۔ ورع وتقویٰ اور خلوص و دیانت میں معروف ہوں اور اپنی قوم کا اعتماد حاصل ہو۔

(۳) ان کے علاوہ ادارے میں ایسے ماہرین قانون کو جمع کیا جائے جو اپنی دین پسندی میں معروف ہوں اور فی الواقعہ دل سے چاہتے ہوں کہ ملک میں اسلامی قانون روبہ عمل آئے۔

(۴) اس ادارے کو ہر قسم کی سیاسی اعتراض سے بالکل آزاد رکھا جائے

(۵) اس ادارے کے بنیادی اصولوں میں یہ بات شامل میں ہونی چاہیئے کہ قرآن وسنت کو کسی خاص نظام یا قانون کے مطابق بنانے کے بجائے پوری غیر جانب داری کیساتھ قرآن وسنت کا حقیقی مفہوم سمجھے اور ان سے وقت کی تمام پیش آمدہ مشکلات کا قابل عمل حل تلاش کرنے کی پوری کوشش کی جائے گی۔

اگر ان خطوط پر واقعتہً کوئی ادارہ قائم ہوگیا تو ہم پوری قوت کیساتھ یقین دلانے میں حق بجانب ہیں کہ انشا اللہ اس طرح اسلامی قانون کی منزل بہت قریب ہوجائیگی۔ حکومت کو علماء کا بھرپور تعاون اور عوام کی سرگرم تائید حاصل ہوگی ۔ اور اس بات کا اظہار کرنے میں کوئی جھجک محسوس نہیں کرتے کہ جس خوش نصیب حکومت کی سرگرمی میں یہ اہم کا انجام پائیگا وہ پاکستانی عوام کی محبوب ترین حکومت ہوگی اور آنے والی نسلیں اسے اپنا سب سے بڑا محسن شمار کریں گی۔

بس شرط یہ ہے کہ اسلامی قانون کی طرف جو قدم بھی اٹھایا جائے وہ کسی وقتی تاثر کا نتیجہ نہ ہو۔ بلکہ پورے خلوص ودیانت اور قلبی لگن کیساتھ اسے شروع کیا جانے اور اس کے ہر مرحلے پر مزکورہ بالا پانچ امور کا مکمل لحاظ کر کے عوام

پاکستان ایک نظریاتی مملکت ہے اور اس کا قیام دو قومی نظریہ کی بنیاد پر عمل میں آیا تھا۔

مسلم قومیت سے کیا مراد ہے ؟ اس کی وضاحت کرنے بیٹھیں تو صفحے کے صفحے سیاہ ہو جائیں گے ۔ میں اس ضمن میں
صرف علامہ اقبال سے رہنمائی حاصل کرتا ہوں جنہوں نے کہا تھا

اپنی ملت پر قیاس اقوام مغربی سے نہ کر
خاص ہے ترکیب میں قوم رسول ہاشمی
ان کی جمعیت کا ہے ملک و نسب پر انحصار
قوت مذہب سے مستحکم ہے جمعیت تری (1)

پس جس قوم کی اساس دین اسلام پر ہو وہاں نفاذ شریعت مقصود و مطلوب ٹھہرے گا یہی ہماری منزل ہے لیکن اس
سلسلے میں دو سوال بہت اہمیت کے حامل ہیں پہلا یہ کہ شریعت کو نافذ کون کرے گا؟ اور دوسرا یہ کہ نفاذ شریعت کے
لیے حالات کیسے سازگار ہوں گے ؟ پہلے سوال کے جواب میں ایک ذاتی مشاہدے کی بات عرض کروں گا ۔ پاکستان میں
حدود آرڈیننس نافذ ہے جس کے تحت شراب نوشی جرم ہے اور عدالتیں اس پر سزا دیتی ہیں لیکن میں نے بچشم خود
ایک نجی محفل میں عدالت کے ایک محترم جج صاحب کو شراب پیتے دیکھا تو میں دنگ رہ گیا کہ یہی صاحب اسی جرم میں
کل کرسی عدالت پر بیٹھ کر مجرم پر حد لگادیں گے ۔ تو جہاں ارباب حل وعقد کا یہ کردار ہو وہاں شریعت کون نافذ
کرے گا؟ اب آیئے نفاذ شریعت کے لئے سازگار حالات کی طرف۔ دولت کی ہوس اور مادی وسائل کی دوڑ نے تباہ
کرکے رکھ دیا ہے کلام پاک میں اس صورت حال کی عکاسی نہایت واضح الفاظ میں کی گئی ہے :

ترجمہ ”(لوگو) تم کو (مال کی) بہت سی طلب نے غافل
کر دیا یہاں تک کہ تم نے قبریں جا دیکھیں ۔“ (2)

حضور نبی کریم ﷺ ، خلفائے راشدین اور اس کے بعد حضرت عمر بن عبدالعزیز کے مبارک ادوار میں تمام لوگوں
بنیادی ضروریات کی ضمانت حاصل تھی ۔ حضرت عمرؓ فرمایا کرتے تھے کہ اگر دریائے فرات کے کنارے ایک کتا بھوک
سے مرجائے تو عمر سے قیامت میں اس کی بازپرس ہوگی ۔ اس ضمانت کے بعد نہ چوری کا کوئی جواز رہتا ہیں نہ خیانت
کا اور نہ کسی قسم کے اخلاقی یا سماجی جرم کا۔ اگر ایسے حالات پیدا کر دیئے جائیں تو نفاذ شریعت کا عمل آسان بھی ہو
اور اپنے اخلاق میں کامیاب بھی ۔ لیکن جہاں معصیت عام ہو ، نیچے سے اوپر تک سب مادیت میں ڈوبے ہوئے ہوں
ہر شخص ”ھل من مزید“ کی منہ بولتی تصویر بنا ہوا ہو وہاں اگر شریعت کسی قانون کے ذریعے نافذ ہو بھی گئی تو یہ ایسا
ہو گا کہ جیسے کسی دیگچی کو چولہے پر رکھ اس میں پانی گرم کیا جائے نیچے سے چولہے میں کوئلے ڈالتے رہیں اور اوپر سے

ن قدم

چلتے ہیں)

مجھے یہ کہنے میں کوئی عار نہیں کہ نفاذ شریعت کے سلسلے میں جو عوامل مانع رہے ہیں ان میں سیاست دار بیوروکریٹس اور سرمایہ دار (زمیندار اور تاجر) سرفہرست ہیں انہیں خطرہ ہے کہ نظام شریعت نافذ ہوگیا تو سب سے زیادہ نقصان ان ہی کو ہوگا بد قسمتی سے شریعت ان کے مزاج سے لگا نہیں کھاتی (الا ماشا اللہ) مغربی نظام تعلیم کے پروردہ ان طبقات نے اسلام جیسے سہل مذہب کے قوانین کے نفاذ کو مشکل بنادیا ہے۔ ہماری نظام تعلیم کا دوغلا پن بھی ہمیں گھن کی طرح کھا رہا ہے۔ بیشتر اعلیٰ درجے کے انگلش میڈیم سکول چرچ اور مشنری اداروں کے زیر اہتمام چل رہے ہیں۔ ہمارے سماج کے مذکورہ بالا طبقات کے بچے ان ہی اداروں سے تعلیم حاصل کر کے نکلتے ہیں لہٰذا ان انداز فکر ہی بدل جاتا ہے احکام شریعت کو ماننے والے اور ان کے نفاذ کا مطالبہ کرنے والے لوگ ان کے نزدیک (FUNDAMENTALIST) ٹھہرے ہیں۔ ایران کے سلجوق فرمانروا سلطان الپ ارسلان کے وزیر نظام الملک طوسی کا واقعہ ہے کہ اسے بادشاہ نے کچھ رقم فوجی قلعے تعمیر کرنے کی غرض سے دی۔ اس نے اس رقم سے مدرسے تعمیر کرادیئے۔ بادشاہ کو جب معلوم ہو تو وہ ناراض ہوا۔ نظام الملک طوسی نے اسے یہ کہہ کر قائل کرلیا کہ یہ مدرسے اپنی نوعیت میں علم وفکر کے قلعے ہیں جہاں سے فارغ التحصیل طلبہ قوم کی رہنمائی کے ذریعے نہ صرف اعلیٰ اخلاق کی تعمیر میں مدد دیں گے بلکہ اندرونی وبیرونی خطرات کے خلاف موثر دفاع بھی فراہم کریں گے۔

مختصر یہ کہ

(۱) پہلے نفاذ شریعت کے لیئے سازگار ماحول قائم کیا جائے جس کے لیئے نظام تعلیم میں بنیادی تبدیلی لازمی ہے

(۲) جن لوگوں کو نفاذ اسلام کی ذمہ داری سونپی جائے وہ قرآن حکیم کی ان شرائط پر پورا اتریں جن کا ذ "سورۃ الحج" کی آیت نمبر ۴۱ میں دیا گیا ہے

(۳) معیشت کو از سرنو اس طرح مرتب کیا جائے کہ ہر شخص کو اس کی بنیادی ضروریات کی ضمانت حاصل ہو۔

منجانب

پروفیسر ایس۔ایم معین قریشی صاحب

ایم۔اے۔ایل ایل بی۔ ایف بی آئی ایم (لنڈن)

ڈائریکٹر سوشل سیکورٹی سندھ۔کرا

Interviewed by the Research Scholar

(1) Allama M. Iqbal (Shair-e-Mashriq)

(2) QURAN "ALTAKASUR" (2-1)

موضوع گفتگو سوال یہ ہے ۔کہ پاکستان میں قانون شریعت کا نفاذ آپ کی رائے میں اب تک عمل میں نہیں آیا۔ اس کا ذمہ دار کون ہے ۔

۱۔ آیا حکومت ہے '

۲۔ سیاسی جماعتیں ہیں '

۳۔ قانون کے منصف ہیں '

۴۔ مشیران قانون ہیں '

۵۔ ملک کے دانشور ہیں '

۶۔ عوام ہیں '

۷۔ علماء دین ہیں ۔

تاریخی پس منظر میں دیکھا جائے تو پاکستان کے قیام کا مقصد بہت واضح تھا کہ ایسے معاشرے کی تشکی جہاں مسلمان قرآن وسنت کے مطابق اپنی زندگی بسر کر سکیں ۔ اس معاشرے میں خیر کا پہلو نمایاں ایک صالح معاشرے کی تشکیل میں ہر فرد کی تربیت کا عنصر شامل ہوتا۔

پاکستان کے قیام کے بعد توجہ کا مرکز اجتماعی فلاح وبہبود نہیں رہا۔بلکہ ذاتی حرص و ہوس ' جاہ اور عیش و عشرت نے اس کی جگہ لے لی دراصل اسلامی معاشرے میں نیکی اور حسن عمل کی ابتدا ر رہنما سے ہوتی ہے ۔ اسکی مثال خود حضور اکرم صلی اللہ علیہ وآلہ وسلم کی ذات مبارک ہے ۔ آپ تھے ' امین تھے ' محبت کرنے والے تھے ' درگذر اور صلہ رحمی سے کام لیتے تھے اپنی ضروریات کو پ ڈال کر دوسروں کی مدد فرمایا کرتے تھے ۔ اور سادگی سے زندگی بسر کرتے تھے ۔ اور بڑی بات یہ ک خوشنودی حاصل کرنا آپ کے ہر عمل کا مقصد تھا۔ لہٰذا آپ صلی اللہ علیہ وسلم نے برائیوں سے ہوئے معاشرے کو یکسر بدل کے رکھ دیا۔

اب آپ اپنے معاشرے کی طرف آیئے ۔ قائداعظم کی وفات اور قائد ملت کی شہادت کے ! ملک کی سیاست سازش کا شکار ہوگئی ۔ جونکہ سربراہ محض اقتدار کے غلام تھے ۔ اور خلق خدا کی

حاصل کرنے کی بے قابو خواہش اور اقتدار کی کرسی تک پہنچنے کی دیوانگی تھی۔ معاشرے کا اونچا اور با
طبقہ ایسی زندگی کو پسند کرنے لگا جس میں جرائم ہی جرائم تھے۔ اس لئے مقصد خیر سے پلٹ کر شر کی طر
چلا گیا۔ جب حکمران اور منتخب نمائندے ہی گمراہ ہوں۔ تو وہ کس کی راہنمائی کریں گے۔ عوام تو جہالہ
اور بدحالی میں گرفتار ہے۔ کافی عرصہ تو انتخابات نہیں ہوئے۔ اور جب ہوئے اور جمہوریت کا دور شر
ہوا۔ تو حکومت کے نشہ میں عوامی نمائندے بدمست ہوگئے۔ بہرحال نہ حکومت شریعت کا نفاذ چاہتی ہے
دانشور اور نہ علماء۔ عوام چاہتے تو ہیں کہ یہاں شریعت کا نظام نافذ ہو۔ اور اللہ کے قانون کی حکمرانی ہ
لیکن بحیثیت ایک طاقت کے اس کے لئے کوشش نہیں کرتے۔ کیونکہ وہ جن کو ووٹ دے کر منتخب کر
ہیں۔ وہ عوام کے مطالبات کو کوئی اہمیت نہیں دیتے بلکہ وہ پارٹی کی بنیاد پر یا انفرادی اثرورسوخ
ووٹ لینا اپنا حق سمجھتے ہیں۔ اس میں شک نہیں کہ جمہوری نظام میں عوام کی فلاح وبہبود کے کام ہو
ہیں۔ لیکن وہ محض معاشی یا معاشرتی طور پر لوگوں کو محتاج بنا کر رکھنے کے برابر ہے۔ جب تک خد
خوف نہ ہوگا۔ لوگوں کے ساتھ محبت کا جذبہ نہ ہوگا۔ اور خدمت خلق کو عبادت کا درجہ نہ دیا جائے
تب تک معاشرہ تبدیل نہیں ہوسکتا۔ معاشرے کو تبدیل کرنے کے لئے سب سے پہلے سوچ کی تبد
ضروری ہے۔ اگر سوچ میں روشنی ہے۔ تو عمل کی آنکھیں بھی روشن ہونگیں اور اگر سوچ میں اندھیرا ہے
پھر عمل میں ظلم بھی ہوگا اور ظلمت بھی ہوگی۔ اللہ تعالیٰ نے انسانوں کی راہبری اور راہنمائی کے لئے
ایسا دستور دیا ہے۔ جسکی سچائی میں کوئی شک نہیں۔ اور حضور صلی اللہ علیہ وسلم نے اس نظام کو تشک
کرکے دکھایا۔ اور مٹھی بھر مسلمان عرب کے ریگستانوں سے لیکر تمام دنیا پر چھا گئے۔ یہی نظام اگر آج
نافذ ہو۔ اور پورے خلوص کے ساتھ اس پر عمل کیا جائے تو معاشرہ نیکیوں سے منور ہوسکتا ہے۔ لیکن
اہل فکر کا مطالبہ ہے۔ اور نہ ہی عوام کا دباؤ ہے۔ اور نہ حکمرانوں کی مرضی ہے۔ لہٰذا اس برائی میں
سبب برابر کے شریک ہیں۔ سب سے پہلے عوام میں یہ شعور پیدا ہو۔ علماء اور دانشور اور اصحاب فکر ا
اہمیت جانتے ہوئے خاموش نہ رہیں۔ اور حکمران جو ہمارے ووٹوں سے اقتدار تک جاتے ہیں عوام
خواہشات کا احترام کرنے کے لئے مجبور ہوں۔ یہ سچ ہے کہ جاگیردار یا سرمایہ دار طبقہ صرف اپنے
اور آرام دہ زندگی چاہتا ہے۔ اس طبقے کا عوام سے صرف نعروں کی حد تک تعلق ہے۔ اس لئے
انتخاب ہی نظام بدلنے کا ذریعہ ہے۔ تو اس کے لئے ہمارے علماء، دانشوروں، حکومت، عوام، قانون
منصب اور مشیر سمیت تمام سیاسی جماعتوں کو بحیثیت مجموعی ایک اکائی کی حیثیت میں کام کرنا پڑے گا۔
کے لئے شاید وہ تیار نہیں۔ لہٰذا جب تک عوام بیدار نہ ہوں گے۔ اور اصحاب فکر اس کے لئے
نہیں کریں گے، تب تک تبدیلی ناممکن ہے۔ ہمارے اس وحی کی روشنی موجود ہے۔ لیکن افسوس کہ

اپنی بہادری گردانتے ہیں۔ خدا ہم پر رحم کرے۔ لیکن خدا ابھی کیوں رحم کرے۔ جب ہم ایک دوسرے پر رحم نہ کریں۔ ہمارے سامنے حضور اکرم صلی اللہ علیہ و آلہ وسلم کی روشن مثال موجود ہے۔ جب تک ہم حضور صلی اللہ علیہ وسلم کے اسوہ حسنہ کو مشعل راہ نہ بنائیں گے۔ ہم ذلیل وخوار ہوتے رہیں گے اسلامی نظام تو دور کی بات پاکستان کے مسلمانوں کو مسلمان کہتے ہوئے شرم آتی ہے۔ حدیث نبوی صلی ا علیہ وسلم ہے کہ ''ایک مسلمان دوسرے مسلمان کی جان، دل، عزت، آبرو سب حرام ہے۔'' تو پھر اس عظیم انسان صلی اللہ علیہ وسلم کی امت کہلانے کے دعویدار کیوں ہیں کہ ہمارے ملک میں اسلامی نظ کیا نافذ ہو گا۔ یہاں تو مسلمان اپنے مسلمان ہونے کا ثبوت پیش نہیں کر سکتے۔ کیوں کہ ہماری زندگی اسلا تعلیمات کے منافی گزر رہی ہے۔ میری نظر میں ہمارے ملک کا ہر فرد اسلامی نظام کے نافذ نہ ہونے کا ذ دار ہے۔ اپنی رائے کے اختتام پر علامہ اقبال کا ایک شعر تحریر کرتا ہوں امید ہے میرے خیالات وضاحت ہو جائے گی۔

''افراد کے ہاتھوں میں ہے اقوام کی تقدیر
ہر فرد ہے ملت کے مقدر کا ستارہ !![1]

Interviewed by the Research Scholar
(1) Allama M. Iqbal (Zarb-e-Kaleem)

Chapter - 4 (ii)

Inter Views With
Political Parties
Leaders / Members

This is a well established fact that Pakistan was created in the name of Islam. This subcontinent was divided on the basis of two nation theory. The muslims of India fought the battle for making a home land for the muslims under the dynamic leadership of Quaid-e-Azam Mohammad Ali Jinnah, a home land where muslims could freely live and act according to their own notion and way of life. Overwehelming majority of muslims belonging to every walk of life including Ulemas, Priests, Nobles, Commoners, Rich & Poor, Industrialists and workers educationists, lawyers struglled unitedly for achieving the Goal. The struggle was not only for achieving a piece of land where power managers should fight among themselves for capturing the seat of Govt. for expoliting general people. The makers of Pakistan had not such intention. The desire was to implement Islam in totality. Islam is a perfect Din and covers entire life. It is not only a religion of practising same rituals, Islam preaches for establishing a just society where equitable distribution of resources is necessarily implemented without any distinction of Caste & Colour. In an Islamic society, no one is above the law including the rulers and ruled. The basic necessities of life are to be provided to all. The homeland was achieved by the favour of Allah Almighty, but unfortunately we could not be able to fulfil the promise made to Allah and to people as we failed in establishing a society based on the tenents of Islam. Why we could not achieve our desired goal; whether we really tried and failed ?

There might be various opinions and grounds for not achieving the goal, the main reasons for failure seem to be:-

1. In the beginning the founding fathers could not settle themselves and became busy in consolidating the newly created State where influx of up rooted mohajirs specially from east Punjab perplexed and agonised the entire Government. Millions of muslims were forced to leave their hearth & home, looted, murdered rather butchered. Naturally the spirit of the struggle was dwindled for the time being. Ulemas and Priests too did not press the Govt. in the beginning for implementing Islamic law in the hope that the Govt. i.e. Muslim League would fulfil its promise.

2. Quaid-e-Azam died, the Constitution could not be prepared and Liaquat Ali Khan became busy in other matters. The game of power politics began, in the meantime, he was assassinated in 1951.

3. The drama of the persons of vested interest began to be played, successive change of Govt. presented a gloomy picture of politics which became the field of battle for the self seekers, exploiters, Generals, Jagirdars, Capitalists and Vederas, even the joint efforts of Ulemas of various thoughts in 1951 could not bear fruits.

4. No sincere effort was made by any Govt. in power to implement Islamic system of Government.

5. The religio political parties could not get upper hand due to petty prejudices, power politics and high handedness of anti-islamic forces.

6. Democracy and election became the game of power and wealth.

7. Seeker of political powers divided the muslims on the basis of Cast, Creed language, territory and sect and they became entangled among themselves.

8. For eye wash an agreed Constitution was made in 1973 in which some progress was made for implementing Islamic injunctions, but no Govt. sincerely tried to implement it. Even the self styled claimant and champion of Islam General Ziaul Haque could not do anything except paying a lip-service to the cause.

9. Mass illitercy of the people also blocked the implemention.

10. Islamic ideology Council was created but its recommendetion did not get any heed. The entire recommendations put in cold storage.

11. The Govt. came under the influence of western powers due to worst economic condition and heavy loans. These Western powers particularly America raised the boggy of fandamentelism, terrorism and persecution. A gloomy picture of Islam is being presented in the World.

Cont'd....P/3...

12. The political parties of the Country except few regligio political parties are not genuinely interested in implementing Islam as Islam would not allow them to play their nefocrious games and to exploit the General masses.[1]

Vice President - J.U.P.
(Prof. Shah Faridul Haque)

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(1) Interviewed by the Research Scholar

جناب محمد حسین حقانی صاحب (ایلس ایم پی اے)

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(1) پس منظر

(الف) تقسیم کے بعد حالات نقل مکانی، انتظامی بدحالی، مالیاتی پریشانی کی وجہ سے زیادہ توجہ کے مستحق

(ب) ملک میں دستور سازی میں بوجہ بہت زیادہ تاخیر (ساڑھے آٹھ سال) جس کے ذریعہ سسٹم کا تعین

(ج) اس اثنا میں بانیان میں سے دو بڑے انتقال کر گئے۔

(د) دیندار، علماء و مذہبی رہنماؤں نے صاحبانِ اقتدار سے حسن ظن کی بنا پر یہ توقعات وابستہ کی تھیں
اسلامی قانون شریعت نافذ کریں گے کہ قوت نافذہ ان کے پاس تھی۔

(ہ) صاحبان اقتدار اور قوت نافذہ رکھنے والی قیادت، نے علماء کے بائیس نکات برائے نفاذ شریع
دستور کا حصہ بنانے میں لیت و لعل کا مظاہرہ کیا۔ یہ قرارداد مقاصد ایک طویل عرصہ تک دبا
غالباً 1983ء میں دستور کا حصہ بن سکی۔

(و) پہلا دستور 56ء میں مکمل ہوا جو پارلیمانی وفاقی تھا اس میں قرآن و سنت کو بنیاد تو بنایا گیا
مثبت پہلو کے بجائے منفی رکھا گیا جس کی توجیہات (غیر ماہرین اسلام و شریعت نے) مب
منشاء شریعت کے خلاف رہیں۔

(ز) اس دستور کے جاری ہونے کا وقت نہ آسکا اور مارشل لا لگا دیا گیا جو وقفہ وقفہ کے بعد 973
(پندرہ سال) رہا اس دوران صدراتی طرز حکومت، کا دستور ایوب خان کا تھا جو بہرحال عوامی اور اس
تھا۔ کتاب و سنت کے منفی پہلو نے بڑے مزے دکھائے اس زمانہ میں عائلی قوانین کا نفاذ ہوا
اکثر و بیشتر دفعات خالصتاً صراحت شدہ کتاب و سنت کے خلاف تھیں مگر اسلام کے بجائے اس
روح کے قریب قرار دیا۔

(ط) اس پورے عرصہ میں تمام حکمراں، قائدین، سیاست دان اور قوت نافذہ ایسے افراد کے پاس رہی
تو اسلام کے شیدائی تھے اور نہ اسلام کے مجموعی نظام حکومت سے آشنا بلکہ اس کے برخلاف وہ مذ
و دین کو صرف عبادتوں کا مجموعہ قرار دیتے تھے یعنی ریاست اور دین دو الگ چیزیں ہیں اور ریا
کے امور میں دین و شریعت کو کوئی دخل نہیں ہے وہی مغربی تصور تھا جہاں پادری کا رول جدا اور حکا
کا رول جدا ہو گیا۔

اس پورے عرصہ میں جمہوریت کے نام پر طوائف الملوکی کی کیفیت رہی البتہ دو دفعہ علماء ما
شریعت نے اسلام کے عادلانہ نظام کی طرف مثبت کوشش کی اور رائے عامہ کو اٹھاتے رہے
وجوہ سے یہ بار آور ثابت نہیں ہوئیں اولاً دین پر دنیا غالب آچکی تھی اور پاکستان کے قیام کا ا
نظریہ فراموش ہو چکا تھا۔ ثانیاً دینی قوتوں نے اس اہم مقصد کے حصول کے لئے جہاد کے عنو
کام نہ کیا اور باہمی دیگر مسائل مختلف میں الجھے رہے جس کے نتیجہ میں حکمرانوں کو مزید من مانی کا
مل گیا۔ یہاں یہ بات بھی قابل غور ہے کہ دینی قوتوں کے ایک گروپ نے اسلامی شریعت کے
کے لئے اسمبلی کی نمائندگی کو ایک موثر سبب گمان کر کے اس طرف پیش قدمی کی تو ایک گ
نے اسلاف کے نقش قدم پر چل کر حکمرانوں کو اسلامی وعظ و نصیحت کے ذریعہ آمادہ کرنے کی ک
کی اور اسمبلی کی نمائندگی کو اپنے منصب کے خلاف جانا۔ نتیجتاً یہ دینی قوتیں دو حصوں میں
ہو گئیں اور سیاسی قوت زیادہ مضبوط ہو گئی تا آنکہ حکومتی ریاستی سسٹم کو سوشلسٹ طرز حکومت
طرف لے جانے کا پرزور نعرہ لگایا گیا کہ طاقت کا سرچشمہ عوام ہیں جبکہ اسلام کا پہلا سبق طاق
سرچشمہ اللہ اور رسول ﷺ کی ذات ہیں (کتاب و سنت)

اور اس نعرہ کی پذیرائی کے لئے بھٹو نے حالات (مارشل لا صدارتی نظام) کا فائدہ اٹھا کر
میدان میں سوشلزم لے کر کودے اس وقت کی قابل ذکر دینی قوتیں (جماعت اسلامی، جمعیۃ

بلکہ اُ

الگ اس کا نتیجہ ظاہر ہے کہ اسمبلی کی نمائندگی خاطر خواہ نہ ہوئی اور عوام اپنے معاش کے حوالے
ادھر بہہ گئے۔

73ء کا آئین جاری ہوا اور دینی قوتوں نے اب، یکجا ہو کر دستور کی سوشلسٹ شق کے خلاف مجا
کارنامہ اندر اور باہر انجام دیا اور یوں یہاں سے دستوری طور پر کچھ روش اسلامی قوانین کے نفاذ کی
مگر 77ء میں مارشل لا آ گیا اور بہت سی خرابیاں لایا تو کچھ اچھائیاں بھی۔ ان میں سے ایک اچھائی یہ
کہ قرارداد مقاصد دستور کا باقاعدہ آرٹیکل بن گیا جس سے قوانین شریعت کی راہیں کھلیں مگر اسلام
مالیاتی، عدالتی، انتظامی، اقتصادی نظام نہ ہونے کے برابر ہیں۔ البتہ بعض معاملات میں شرعی عدا
کے قیام اور ان کے احکامات کا وزن ایک خوش آئند مستقبل کی نشاندہی ہے۔

خلاصہ

1 ابتدائی سات آٹھ سال پاکستان کی بنیاد بنانے کا دستور بنانے اور مہاجرین کی بحالی، انتظام کی
میں گزرے۔

2 اس کے بعد دستور بنتے ہی مارشل لا لگا جس نے کم و بیش 13 سال لئے

3 70ء میں پہلے عام انتخابات مگر سوشلزم ادھر اور چھ نکات ادھر نے 77ء کے مارشل لا کو جنم دیا جو
میں ختم ہوا

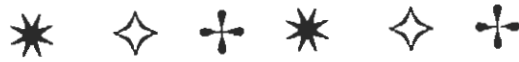
4 47 تا 86 کے 39 سال جاگیردار، سرمایہ دار مراعات یافتہ سیاست کے نام پر مکار خود غرض قی
نے پاکستان کی نظریاتی شکل بگاڑ دی یہ وہ لوگ تھے جو اسلامی نظام نظامِ شریعت کے نفاذ کو اپنی
اپنی آزادروی کی موت سمجھتے تھے۔ سیاست پیسہ کا کھیل شیطان کا چکر ہو گیا۔

5 بے دلی اور نیم دلی اور انجانے خوف نے کمزور قیادت کی بنا اسلام کے قوانین کے نفاذ میں بے حسی بلکہ مخالفت

1 اب وہی جاگیردار، وڈیرہ شاہی، سرمایہ داری، سرداروں، کی اکثریت کی حکومت قیادت و سیاست
سب سے بڑی رکاوٹ

2 دوسرے اس عرصہ میں دنیا اور دنیا کی رنگینیاں (مادی و مالی) نے وہ تصور دھندلادیا۔

3 اسلام کے قوانین کے نفاذ سے ناجائز سودی رشوتی حرام خوری اسمگلنگ کی آمدنیاں بند ہوجائیں گی
خدا پر بھروسہ کم بلکہ معدوم اور اسباب ظاہری پر ہی بھروسہ اور خیرات دینے والے ممالک کا ڈر
سب اسباب کم و بیش رکاوٹ ہیں۔

جی ہاں جہاں سیاسی جماعتیں مسلم لیگ، پیپلز پارٹی (بڑی پارٹیاں) لادینی سیکولر (عوامی نیشنل پارٹی
پی ڈی پی، بلوچستان کی بی این ایم، جی ڈبلیو ٹی، بی ین پی، ایس این اے، ایم کیو ایم وغیرہ اس کے
علاوہ بیرونی دباؤ امریکہ، روس، یورپ وغیرہ (1)

Interviewed by the Research Scholar

Chapter - 4 (iii)

Inter Views With Religious Head and Mufties

ڈاکٹر اسرار احمد صاحب سے ملاقات

آپ نے فرمایا کہ انگریز تو چلے گئے لیکن اپنی عادات، و اطوار کو چھوڑ گئے۔ ہمارے افسران لوگ جوان
کام کرتے رہے وہ بھی ان ہی کے رنگ میں رنگ گئے تھے۔ انہوں نے آزادی کے بعد ان ہی طور طریقوں
سمجھا ان ہی کو حکومت چلانے کے لئے مناسب جانا اور یہ بات ان کے ذہنوں میں بیٹھ چکی تھی کہ پاکستان کو چلا
لئے وہ طور طریقے اور قانون کی تنفیذ مناسب و موزوں ہے جو انگریز چھوڑ گیا ہے چونکہ ہمارے افسران کی
انگریزی کی تعلیم تھی اُسی میں انہوں نے امتحان دیئے تھے اور اُسی کی ڈگریاں حاصل کی تھیں اور وہی ڈگریاں
کار آمد سمجھی جاتی ہیں ان ہی کو ہر محکمہ میں ترجیح دی جاتی ہے اور اسی کو ہی اپنایا جاتا رہا ہے اور اب بھی ان ڈگ
فخر کیا جاتا ہے۔

یہ بیورو کریسی قائم و دائم ہے۔ نفاذِ شریعت قانون اگرچہ دستور میں موجود ہے لیکن یہ بیورو کریٹس
پاکستان میں نافذ (Impliment) کرنے کے لئے بالکل تیار نہیں اور نہ وہ چاہتے ہیں کہ اس کا نفاذ پاکستان
آج پینتالیس سال سے نام تو قانونِ شریعت کا لیا جاتا ہے۔ پبلک سے عہد و پیمان بھی کئے گئے کہ اس قانو
ضرور ہو گا لیکن ہونے نہیں دیا۔ اس لئے کہ حکومت میں جو لوگ اس وقت باگ دوڑ سنبھالے ہوئے ہیں بنیادی
دین و قانون شریعت سے دلچسپی رکھتے ہیں نہ اس کا مطالعہ کرنا چاہتے ہیں اور نہ ہی اس کے نفاذ کے خواہاں ہیں
لئے انگریزی کی تعلیم اور انگریزی قانون پر ہی زور دیا جا رہا ہے ور اُسی کو ہی تدریسی اداروں میں پڑھایا جا رہا ہے۔
ڈگری انگریزی قانون کے پاس کرنے کی دی جاتی ہے قانون شریعت نہ صحیح طور پر پڑھایا جاتا ہے نہ اس کی
پاکستان میں ہے نہ دی جاتی ہے۔ قانون کی Practice کے لئے انگریز کی نافذ کی ہوئی ڈگری ہی کار آمد
ہے۔

جس وقت تک پاکستان حکومت سے انگریزی بیورو کریسی نہیں نکلے گی پاکستان میں قانونِ شریعت

ی ہیں
ہدایات بھی جاری کی گئی ہیں کہ چند ایک مقدمات کے فیصلے ان سے لئے جائیں لیکن اُن میں آدھا انگریزی قانو
سہارا لیا جاتا ہے اور آدھا اسلامی قانون جو مرتب کیا گیا ہے اسی سے کام لیا جاتا ہے یعنی آدھا تیتر اور آدھا بیٹر ہو
گیا ہے۔ اسی کوتاہی کی تمام تر ذمہ دار پاکستان حکومت کی بیورو کریسی ہے۔

جب تک بیورو کریسی کی بیخ کنی نہ کی جائیگی پاکستان جو کہ اسلامی جمہوریہ کہلاتی ہے میں نفاذ قانونِ شرع
ممکن نہیں ہوسکتا ہے۔ اسی طرح سیاسی جماعتوں میں چند جماعتیں ایسی ہیں جو صفِ اوّل میں گنی جاتی ہیں لیکن لاد
Secular) حکومت کی دلدادہ ہیں اور علی الاعلان یہ چاہتی ہیں کہ اسلامی قانون نہ آئے لیکن اسلامی جمہوریت کا
بہت زور سے لگاتی رہتی ہیں۔ ویسے وہ خود بھی نہ دین سے دلچسپی رکھتی ہیں اور نہ دینی تعلیم سے واقفیت رکھتی
اگر کچھ واقفیت ہے بھی تو اس کو پاکستان میں استعمال کرنے سے دریغ کرتی ہیں وہ چاہتی ہیں کہ آزاد حکومت ہو
دینی پابندی نہ ہو یہ ہمارے لئے فائدہ مند ہے یعنی اللہ تعالیٰ کے احکامات سے انحراف ان کے لئے موزوں ہے
مغربی طرز حکومت کی دالدادہ ہیں۔

ملک کی دینی سیاسی جماعتیں اگرچہ قانونِ شریعت کے نفاذ کی خواہاں ہیں اور ان کی کوششیں بھی بدستور
ہیں کہ اس کا نفاذ ہر طور سے پاکستان میں ہونا چاہیے۔ لیکن ہر دینی جماعت کے اپنے مسالک ہیں۔ وہ ان پر عمل
ہونا چاہتے ہیں اور ایک دوسرے کو نیچا دکھانے میں لگی رہتی ہیں۔ تاکہ ان کے اپنے مسلک کا دور دورہ ہوجائے او
وہ اپنی طرز میں قانونِ شریعت کے نفاذ کو تقویت پہنچائیں۔ اسی تگ و دو میں ان کی زندگی بسر ہورہی ہے اور و
انتخابات کے انتظار میں ہیں اور جماعت کی مضبوطی اور اکثریت حاصل کرنے کے لئے ہمیشہ کوشاں رہتے ہیں۔

پاکستان کی عوام ان پڑھ ہے ان کو دینی تعلیم کی اشد ضرورت ہے۔ ان کے ذہنوں کو از سر نو دین سے
تعلیم سے سینچنا پڑے گا۔ ان کے ذہن بدلنے پڑیں گے ان کو دین و قرآن کی تعلیم کی روشنی میں اہمیت احکا
سمجھانی پڑے گی تاکہ انہیں یہ معلوم ہوجائے کہ خدا کا قانون ہی صحیح قانون ہے جو ہمارے لئے لازم ہے اور اس
بغیر اسلامی حکومت میں زندگی بسر کرنا ایک عظیم گناہ ہے کیونکہ احکام الہٰی سے انحراف حکم خداوندی سے انکار

حکومت پاکستان ایسے ادارے قائم کرے جن میں دینی تعلیم اتنی اہم اور لازم کر دیئے جائیں کہ اس کو حاصل کئے بغیر کو ڈگری نہ دی جائے۔

جب عوام یہ تعلیم حاصل کر لے گی تو قانونِ شریعت کی تنفیذ آسان ہو جائے گی اور ہر فرد اس پر عمل پیرا ہونے پر اعتراض نہیں کرے گا اس لئے اس کی عقل و دانش اس قانون کے نفاذ کو سمجھنے لگے گی اور اس پر چلنے پر فخر کرے گی اور خدا کا قانون جو قرآن پاک میں آچکا ہے کو ماننے اور اس پر چلنے کو کارِ ثواب اور اپنی نجات کا ذریعہ سمجھے گی موجودہ حالات میں اپنی کم علمی کے زیر اثر وہ قانونِ الہٰی کو سمجھنے سے قاصر ہیں اور نا سمجھی میں یہ نہیں کہ وہ جان بوجھ کر گریز کرنا چاہتے ہیں۔ اس وقت عوام کا یہ عالم ہے کہ ان کا لیڈر جو کچھ بھی ان کو کہتا ہے اسے وہ عالم یا دانشور سمجھ کر اس کی پیروی پر لگ جاتی ہے جو کہ ایک المناک امرِ واقعہ ہے۔ (1)

✷ ✧ ✢ ✷ ✧ ✢

Interviewed by the Reseach Scholar
Dr.Isra-rul Haq is M.B.B.S. (Medical Practitioner by Profession) and renowned religious leader of Pakistan.

محترم جناب مفتی وقار الدین صاحب سے ملاقات

(آپ دار العلوم امجدیہ سبزی منڈی کراچی میں استاد ہیں آپ گورنمنٹ کی مرکزی سیرت کمیٹی، مرکزی ہلال کمیٹی اور نظریاتی کونسل کے م
بھی رہے ہیں اب بھی کبھی کبھی مشورے کے لئے ان کو بلایا جاتا ہے۔)

حکومتِ پاکستان شروع سے لیکر آج تک یعنی ان کا سپر نیر (اعلیٰ) عہدوں پر فائز عملہ اور خود سربراہ مملکہ بالکل یہ نہیں چاہتے کہ قانونِ شریعت کا پاکستان میں نفاذ ہو۔ وہ اپنی سیاسی چالوں کو بروئے کار لاتے ہوئے ایسے اب جواز پیش کر دیتے ہیں کہ شریعت کا نفاذ آج تک التوا میں پڑا ہوا ہے۔ علماء سے نشستیں بھی گاہے بگاہے جمائی جا ہیں دانشور اور علماء سے مشورے بھی لئے جاتے ہیں ان کی ہاں میں ہاں بھی ملائی جاتی ہے ہر آئے دن میٹنگ کا اہتما ہوتا رہتا ہے عہد و پیمان ہوتے ہیں امیدیں بھی دلائی جاتی ہیں لیکن آج تک مرغے کی ایک ٹانگ وہیں کی وہیں ہے اس 45 سال کے طویل عرصہ میں قراردادِ مقاصد پر بھی بحث ہوئی۔ شریعت بل 1989ء بھی اسمبلی میں پیش ہوا پر بحث مباحثہ بھی ہوا لیکن سب بے سود۔ اصل میں بات یہ ہے کہ حکومت اور سربراہ اگر چاہیں گے تو ہی کچھ ہو سکتا ہے ورنہ تضیع وقت کے علاوہ آج تک کچھ نہیں ہوا۔

علمائے دین نے عوام کے جذبے کو ابھارا اور کہا کہ قرآن و سنت ہی مسلمان کی میراث ہے اور عوام کو ا کی تقلید ہی نجات کا ذریعہ ہے اور خدا کا دیا ہوا قانون ہی مسلمان کا قانون ہے جس پر چل کر خدا پاک کے احکام فرمانبرداری ہو سکتی ہے اور وہی ہمارا قانون ہے۔ جس طرح نماز، روزہ، زکواۃ کی پابندی ہم پر لازم ہے اس کی نافرما کفر ہے اسی طرح قانونِ خداوندی یعنی قانونِ شریعت کی نافرمانی بھی کفر ہے۔

مفتی صاحب نے فرمایا کہ مرحوم ذوالفقار علی بھٹو نے Socialism کا نعرہ لگایا کہ ہم اس پر عمل کریں گے۔ اور پھر اسے مشورہ دیا گیا کہ Islamic Socialism کا نعرہ زیادہ موزوں رہے گا اور عوام اس پر راضی ہو جائیں گے۔ بات ایک ہی ہے صرف اضافی لفظ "اسلام" کے Socialism کے ساتھ لگانے سے عوام ساتھ دے گی ا قانونِ شریعت کا نفاذ التوا میں پڑ جائے گا۔ یہ نعرہ کچھ عوام پر اثر انداز نہ ہو سکا البتہ نفاذ قانونِ شریعت التوا میں پڑ گیا اور حکومت کا مقصد پورا ہو گیا۔ اگر حکومت چاہے تو قانون شریعت ہر وقت آسکتا ہے بات صرف چاہنے کی ہے۔

(1) علماء کا اقتدار ختم کرو۔

(2) عوام کو مذہب سے دور رکھو۔ اس سے نفاذ شریعت بہت دور ہو جائے گا اور حکومت کا مقصد پورا ہو جائے گا۔

(الف) قانونِ شریعت کے نافذ ہونے میں شیعہ مذہب بھی آڑے آرہا ہے وہ کسی طرح بھی حنفی شریعت کے حق میں نہیں ہیں وہ ہمیشہ اس کے خلاف رہے اور اب بھی اس کے خلاف ہیں اور رہیں گے۔

(ب) اہل حدیث بھی اس حق میں نہیں ہیں جیسے احناف قانونِ شریعت کا نفاذ چاہتے ہیں یہ لوگ ان کے شانہ بشانہ نہیں چلیں گے کیونکہ چاہتے ہیں کہ سوائے قرآن و سنت کے، کسی اور قوائد و ضوابط کا نفاذ قرآن و سنت کے ساتھ نہ ہو۔ صرف قرآن ہو اور سنتِ رسول ﷺ ہو۔ یعنی کہ تمام قانونِ شریعت قرآن اور سنت پر مبنی ہو گا۔

(ج) لادینی جماعت (Secular) وہ تو ویسے ہی دینِ الٰہی کے خلاف ہیں اس لئے قانونِ شریعت کے حق میں وہ کیسے ہوں گے۔ وہ مسلمین جو قانونِ شریعت میں حجتیں پیدا کرتے ہیں، اور مخالفت بھی کرتے ہیں وہ لادینیت کے زمرے میں آتے ہیں وہ بھی ان کی ہاں میں ہاں ملاتے ہیں۔

علمائے دین، دانشور، فقہا کبھی خاموش نہیں رہے ان کی پیہم کوششوں کے باوجود وہ کامیاب نہ ہوسکے کیونکہ حکومت نے آج تک اس کے نفاذ میں ساتھ نہیں دیا اور اسی طرح تاخیر ہوتی چلی گئی۔ عوام سادہ لوح ہیں، غیر تعلیم یافتہ ہیں، جو کوئی جس طرح ان کو ابھارتا ہے وہ ساتھ ہو لیتی ہے۔ ان کی سادگی سے ہر کوئی فائدہ اٹھاتا ہے۔ حکومت ہو سیاسی جماعت ہو وہ جلدی چکنی چپڑی باتوں میں آجاتی ہے اور ہر ایک کے اندازِ بیاں پر ایمان لے آتی ہے اور اسی طرف جھک جاتی ہے۔ اگر صدق دلی سے دین و ایمان اور قانونِ دین اسلام پر ان کو حقائق سے آگاہ کرتے ہوئے ابھارا جائے تو عوام فوراً ساتھ دینے پر تیار ہو جائے گی۔ عوام ایک طاقت ہے وہ نفاذ قانونِ شریعت میں بہت مدد سے سکتی ہے۔ ان کو صرف صحیح سربراہ ملنا چاہیئے۔ (1)

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(1) Interviewed by the Research Scholar

Chapter - 4 (iv)

Ulemas and Intellectuals
and
Inter Views With
Jurists and Legal Experts

پاکستان میں اسلامی قوانین کا نفاذ کیوں نہیں ہوتا' یہ ایک دلچسپ اور برمحل سوال اس لئے ہے کہ پاکستان اسلامی مملکت بننے کیلئے اور وہ بھی مثالی'۔ وجود میں آیا۔ جس صورت حال سے سارا معاشرہ دوچار ہے۔ اس میں اس کے نفاذ کا کوئی امکان نہیں۔

وجہ یہ ہے کہ اسلام کسی ایک دور۔ کسی ایک صدی کیلئے اللہ تعالیٰ نے نہیں بھیجا۔ اس میں قرآن کے ذریعے زندگی کے بنیادی۔ ابدی اصول انسانوں کے سامنے رکھ دیے۔ ان پر عمل کر کے زندگی کو مفید' مثبت اور کار آمد بنایا جاسکتا ہے۔

نفاذ نہ ہونے کی ایک بنیادی وجہ یہ ہے کہ ہم مسلمان فقہ کو قران سمجھ بیٹھے ہیں اور ہر فرقہ۔ ہر شخص اپنے فقہ کو معاشرے کا قانون دیکھنا چاہتا ہے۔ نتیجہ اس کا یہ نکلتا ہے کہ فرقہ ورارانہ اختلاف سامنے آجاتے ہیں اور روح اسلام غائب ہوجاتی ہے۔ پاکستان بننے کے بعد۔ شیعہ۔ سنی۔ پھر دیوبندی۔ بریلوی قسم کے فرقے تیزی سے ابھرے اور ہر فرقے میں یہ سمجھا گیا کہ اصل اسلام اس کے پاس ہے اور تصور اسلام کو اس نے دوسروں پر تھوپنے کی کوشش کی۔ نتیجہ آپ کے سامنے ہے۔ جب اختلاف کی یہ صورت ہوجائے تو شرعیت کا نفاذ کیسے ہوسکتا ہے؟ جبکہ یہ ہی معلوم نہ ہو کہ کون سی شریعت پر حضور اکرم نے بار بار اتحاد اور اتفاق پر زور دیا ہے

سورۃ ال عمران (۱۰۳) قران میں ایک آیت ہے و اعتصمو بحبل اللہ جمیعا ولا تفرقوا ○ کہ تفرقہ دور کرو اور اللہ کی رسی کو مضبوطی سے پکڑے رہو۔ یہ اللہ کی رسی جس کا ذکر قران پاک میں آیا ہے فقہ کا نام نہیں ہے۔ یہ براہ راست قرآن کی طرف اشارہ ہے

ہم نے قران شریف کو پس پشت ڈال کر اور فقہ کی رسی کو پکڑ کر نفاذ اسلام کو ناممکن بنا دیا ہے۔

ہمارے دینی مدرسوں میں جو تعلیم دی جارہی ہے اس سے ہر مدرسے کے طلبہ ایک خاص ذہن لے کر پیدا ہورہے ہیں۔ ان کے لیے سب سے بڑا معاشی حل یہ ہے کہ وہ ایسے علاقوں میں' جہاں مسجدیں کم ہیں' مسجد بنا کر اس کے امام بن جاتے ہیں اور پھر اسی نقطہ نظر کی تبلیغ کرتے ہیں اور لاؤڈ اسپیکر پر اپنا دین پھیلانے کی جذباتی سطح پر بے معنی کوشش کرتے ہیں اور قران کریم کے فرمان کو بھول جاتے ہیں۔ غور فرمایئے کہ فقہ قرآن کی وہ قانونی تاویل ہے جو اپنے دور اور اپنے عہد کے تقاضوں کو سامنے رکھ کر کی گئی تھی تبدیلی زمانے کا ابدی قانون ہے جو آج ہے وہ کل نہیں ہوگا۔ جو کل ہوگا وہ پرسوں نہیں ہوگا۔ انسان بھی ہر پل بدل رہا ہے۔ اسی طرح معاشرہ اور اس کا دور بھی بدل رہا ہے۔ جب تبدیلی کی صورت یہ ہے تو یہ کیسے ممکن ہے کہ فقہی تاویل' جو ہزار بارہ سو سال پہلے کی گئی تھی' آج بھی اسی طرح مفید اور کار آمد ہو؟ قران پاک اللہ کا کلام ہے اور ہر زمانے کے لیے آیا ہے جب زمانہ بدلتا ہے تو قران پاک کے الفاظ اور معانی بھی نئی روشنی دینے لگتے ہیں۔ اگر ایسا نہ ہوتا تو قران کبھی کا فرسودہ ہوچکا ہوتا۔ اس صورت میں ضرورت اسی عمل کی ہے کہ نفاذ شریعت سے پہلے مسلسل عہد حاضر کے تعلق سے' تحقیق کے ذریعے تیاری کی جائے۔ جب تک عہد حاضر کے تعلق سے تیار نہیں کی جائے گی نفاذ شریعت کامیاب نہیں ہوسکتا۔ ہم اگر اپنے باطن کو ٹٹولیں تو محسوس کریں گے ہم بظاہر اسلام کا نام تو لے رہے ہیں لیکن دل کے نہاں خانے میں ہم نے اسلام کو ناممکن العمل سمجھ کر مسترد کر

ے مطابق قرآن پاک کا گہرا مطالعہ کرنا ہوگا۔ اپنے تعصبات سے اوپر اٹھنا ہوگا۔ سیاسی گروہ بندیوں سے دور ہو کر روح اسلام دریافت کرنا ہوگی۔ آج دو دھاری ننگی تلوار لے کر میدان جنگ میں الیکٹرانک ہتھیاروں کا مقابلہ نہیں کر سکتی۔ ہم نے تیاری تو کی نہیں ہے اور نفاذ اسلام کے محض نعرے لگا رہے ہیں۔ ایک طرف سرمایہ دارانہ نظام کا ظلم اور جبر مسلمانوں کو کچل رہا ہے اور ساتھ ہی مسلمان اسلام کی تعلیم کی روشنی میں سرمایہ دارانہ قوتوں سے مقابلہ کر رہا ہے۔ لیکن اگر الجیریا میں آج مسلمانوں کو حکومت دے دی جائے کہ وہ نفاذ شریعت کر کے چلائیں تو وہ ناکام رہیں گے۔ وجہ یہ ہے کہ شریعت کے تعلق سے انہوں نے ہوم ورک نہیں کیا ہے۔۔

اسلام ایک انسانی مذہب ایک دین ہے جو انسانی رشتوں کا بڑا احترام کرتا ہے اور صحیح معنوں میں انسانی معاشرے کو جنم دیتا ہے۔ ایسا انسانی معاشرہ جو صحیح معنوں پر عدل واحسان پر قائم ہو۔ جہاں سب کیساتھ یکساں مساویانہ سلوک کیا جاتا ہو۔ جہاں انسان عذاب دوزخ سے ڈرتا ہو اور عاقبت پر دل سے ایمان رکھتا ہو۔ اسی کا نام تقویٰ ہے اور تقویٰ ہی اصل ایمان ہے۔ صرف قاضی عدالتیں قائم کرنے سے نفاذ شریعت نہیں ہوسکتا۔ اس کے لئے پورے معاشرے کو اور اس معاشرے کے انسان کو بدلنے کی ضرورت ہوگی۔ احمد شہید بریلوی کی تحریک جہاد اسی لئے ناکام ہوئی۔ اب فوری طور پر اس بات کی ضرورت ہے کہ تعلیم کو عام کر کے ایسے نصابات مرتب کئے جائیں کہ جن کے ذریعے نئی نسل کے ذہن کو اسلام کو قبول کرنے کی طرف خوش دلی کے ساتھ قائل کیا جاسکے۔ اب جبکہ انگریزی میڈیم کو ہم نے اختیار کرلیا ہے اور "اے لیول" "اولیول" میں اس نصاب کو پڑھا رہے ہیں جو برطانیہ۔امریکہ۔اور کینیڈا کی ضرورت اور تقاضوں کے مطابق لکھا گیا ہے تو اس سے ہماری نئی نسل اسلام سے اور دور ہوتی جارہی ہے۔ اور آیندہ دس سال میں مجھے تو یہ نظر آرہا ہے کہ ہمارا تہذیبی ورثہ اور میراث بے معنی ہو کر رہ جائے گی اور ایسا معاشرہ ازخود وجود میں آجائے گا جس میں تعلیم یافتہ طبقے کے لیے اسلام بے معنی اور غیر ضروری بن جائیگا۔ علامہ اقبال کی شاعری ہم سے مکالمہ کرنا بند کر دے گی بلکہ اگر دیکھا جائے تو یہ عمل شروع ہوچکا ہے۔ علامہ اقبال نئی نسل سے بہت دور ہوگئے ہیں اور یہ عمل مسلسل جاری رہے گا۔

جتنی حکومتیں اب تک بر سراقتدار آئی ہیں ان میں ایک بھی حکومت، ایسی نہیں تھی جو نفاذ اسلام چاہتی ہو۔ حتیٰ کہ جنرل ضیاالحق کی حکومت اگر چاہتی تو وہ بنیادی کام کر کے یا کر اکر نفاذ اسلام کر سکتی تھی۔

آج ماضی پر نظر ڈالیے تو یوں محسوس ہوتا ہے کہ وہ بھی اسے اپنے باطن میں ناقابل عمل سمجھتی تھی اور اسلام کا نام لے کر دنیا کو فریب دے رہی تھی۔

ملک میں ایک ہی جماعت ہے جو نفاذ اسلام کا بار بار اعلان کرتی ہے۔ لیکن یوں محسوس ہوتا ہے کہ اس جماعت نے بھی پوری طرح عہد حاضر کو پورے تناظر میں رکھ کر اسلام کے تعلق سے پورا ہوم ورک نہیں کیا ہے۔ دوسری جماعتیں عمداً اسلام نہیں چاہتیں۔ اسلام صرف کوڑے مارنے اور سنگسار کرنے کا نام تو نہیں ہے۔ سنگساری کی سزا اس وقت دی جاسکتی ہے جب اسلامی معاشرہ قائم ہوچکا ہو۔ یہ معاشرہ نعرے بازی۔ لیپا پوتی اور صرف اظہار جذبات سے قائم نہیں ہوسکتا۔

علماء صرف اپنے فرقے کی نمائندگی کر رہے ہیں۔ ان کے یہاں عام طور پر وہ وسعت نظری نہیں ہے جو ہونی

یہی مقصد ہے ۔ خیرات و صدقات بھی اسی کام کو آگے بڑھاتے تھے ۔ لیکن ہمارے معاشرے کی سفاک زر پرستی نے قانون وراثت ' زکواۃ ' عشر سب کو بے معنی بنادیا ہے ۔ علماء اور دانشور ان مسائل پر غور کرنے کے بجائے فرقہ پرستی کو سیاست میں استعمال کرکے اپنا الو سیدھا کررہے ہیں ۔ اور ایک آخری بات آپ کو اور بتاؤں جس سے ہمارے باطن کا پتا چلے گا : کہ جتنی قران پاک کے احکامات کی خلاف ورزی پاکستان میں ہورہی ہے اتنی ' اگر شراب اور سیکس (Sex) کو امریکہ یا یورپ کے معاشرے سے خارج کردیا جائے ' تو خود امریکہ یا یورپ میں نہیں ہورہی ہے ۔ یہ بڑی تشویشناک بات ہے ذرا غور تو کیجئے ۔(1)

منجانب ۔ جناب محترم جمیل جالبی صاحب

سابق وائس چانسلر یونیورسٹی آف کراچی

سابق چیئرمین ' مقتدرہ قومی زبان

رکن اسلام مائزیشن کمیشن آف ایجوکیشن

☆ ○ ☆ ○ ☆

(1) Interviewed by the Research Scholar

از مفتی ڈاکٹر شجاعت علی قادری مرحوم شیخ الحدیث دار العلوم نعیمیہ کراچی

یہ ملک اسی بنیاد پر حاصل کیا گیا تھا کہ مسلمان ایک الگ اُمت (Nation) ہے اور کسی دوسری قوم کے ساتھ اپنے عقائد اپنی تہذیب اور تمدن میں ان کا کوئی اشتراک نہیں۔ یہی ایک بنیاد تھی جس نے ہندوستان کو تقسیم کرنے کا جواز مہیا کیا اور انگریز جو غیر منقسم ملک کے حاکم تھے انہوں نے بھی اس دلیل کو معقول سمجھا اور تسلیم کیا۔

جب پاکستان وجود میں آگیا تو بد قسمتی سے پاکستان ان حصوں میں بنا جو اقتصادی اور تمدن کے اعتبار سے انتہائی پس ماندہ تھے جہاں انتظامیہ کو دفاتر کے لئے اسٹیشنری کا ساماں تک مہیا نہ تھا۔ ان حالات میں مسلمان لیڈروں کی پوری توجہ ملکی انتظام چلانے پر مرکوز ہو کر رہ گئی۔ ظاہر ہے کہ اگر ایسا نہ کیا جاتا تو اس ملک کا وجود ہی خطرے میں پڑ جاتا اس لئے ملک کی اسمبلی نے اسلامی قوانین کی تدوین اور اس کے نفاذ پر توجہ نہیں دی۔ لیکن یہ اس عظیم کوتاہی کا جواز نہیں ہے یقیناً اس کوتاہی میں بعض لوگوں کی شعوری کوشش بھی شامل تھیں جو چاہتے تھے کہ پاکستان اور ہندوستان سے صرف جغرافیائی حد تک الگ ہو لیکن نظریاتی حد تک علیحدگی نہ ہو۔ انگریز جو مجبوراً ملک چھوڑ کر جارہے تھے ان کی فطری خواہش یہی تھی کہ ان کے جانے کے بعد بھی اس ملک میں ان کا بنایا ہوا نظام جاری رہے۔ انہوں نے اپنے علم اور تجربے کی بنیاد پر اس سلسلے میں خاطر خواہ کامیابی حاصل کی چنانچہ ہندوستان اور پاکستان دونوں ہی میں انگریزوں کا بنایا ہوا قانون ہی حرف بحرف جاری رہا۔ اس کے جاری رہنے کا بڑا سبب یہ بھی ہوگا کہ دونوں ملکوں میں ایسے لوگوں کی کافی بڑی تعداد موجود تھی جنھوں نے انگریزوں کی درس گاہوں سے علم حاصل کیا تھا اور وہیں تربیت پائی تھی۔ ان کی علمی حیثیت خواہ کچھ ہی کیوں نہ ہو لیکن حاکم قوم کی زبان سے آشنا ہونے کی وجہ سے معاشرے میں ان کو برتری حاصل تھی۔ انگریزوں کے جانے کے بعد یہ حضرات ان کے جانشین بن بیٹھے اور ان کی پہلی ترجیح یہی تھی کہ انگریزوں کے بنائے ہوئے تعلیمی ادارے ان کی اولاد در اولاد کو اس تعلیم و تربیت سے بہرہ ور کرتے رہیں جس کی وجہ سے قیادت و سیادت ان کے ہاتھ میں آئی ہے باوجود بہت سے اختلافات کے دونوں ملکوں کے حکمرانوں کا طبقہ

قانونی جواز نہیں تھا۔ لیکن ایک طبقے نے اس زبان کو محض اپنی بقا کے لئے باقی رکھا اور پروان چڑھایا۔ بہت سے اسلامی ملکوں پر استعمالی قوتیں قابض رہیں ہیں لیکن جب وہ ملک سے رخصت ہوئی ہیں تو ان کی زبان بھی رخصت ہوگئی۔ مثلاً مصر اور الجزائر وغیرہ۔ اب ان ملکوں میں سرکاری زبان عربی ہے۔ لیکن ۴۵ سال گزر جانے کے بعد پاکستان میں اب بھی سرکاری اور دفتری زبان انگریزی ہی ہے اور اس کی وجہ سوائے اس کے اور کچھ نہیں کہ یہ طبقہ پاکستان کے مسلمانوں پر حکمرانی کرتا آیا ہے وہ اپنی حکمرانی سے دست بردار ہونے کو تیار نہیں۔ تقریباً ہر حکومت اعلان کرتی ہے کہ اردو کو سرکاری زبان بنادیا گیا ہے۔ لیکن جب دفتر جاتے ہیں تو اردو میں آپ کی بات سننے کو بھی تیار نہیں ہوتا۔ اس مختصر سی تمہید سے یہ اندازہ لگانا کچھ مشکل نہ ہوگا کہ اسلامی نظام کی راہ میں سب سے بڑی رکاوٹ اس ملک کا حکمران طبقہ ہے۔ یہ وہ طبقہ ہے کہ اسلامی نظام کے نفاذ سے یہ لوگ یقیناً اس پوزیشن میں آجائیں گے جس کے آج محکوم لوگ ہیں۔ حکمران طبقے میں ایک دونوں ایوانوں کے نمائندگان ہیں دوسرے بیوروکریسی ہے۔ تیسرا طبقہ جو اگرچہ حکمران کا تو نہیں لیکن اس ملک کے عوام کا خون چوسنے والوں میں صفِ اوّل کا ہے یہ وہ لوگ ہیں جو کسی نہ کسی طرح قانون کے پیشے سے وابستہ ہیں۔ حال ہی میں پاکستان کی عدالت عظمیٰ کے ریٹائر ہونے والے جسٹس نے بجاطور پر ارشاد فرمایا کہ مجھے افسوس ہے کہ لوگوں میں انصاف فراہم نہیں کرسکا اور موجودہ چیف جسٹس صاحب نے حلف برداری کی تقریب میں اس امر کا برملا اعتراف کیا کہ اس نظام عدالت میں لوگوں انصاف مہیا کرنا ممکن نہیں۔

پاکستان کی عدالتوں کے فاضل جج صاحبان جن میں کچھ خدا خوفی ہے۔ اس نظامِ عدالت کا رونا روتے چلے آئے ہیں لیکن ظاہر ہے کہ اس کی تبدیلی کا مطلب حاکموں کو محکوم اور محکوموں کو حاکم بنانے کے مترادف ہوگا۔ فرض کیجئے کہ آج مکمل اسلامی قانون نافذ کردیا جاتا ہے تو ظاہر ہے کہ اس کے لئے فقہ اسلامی کے ماہرین کی ضرورت پیش آئے گی۔ اگر کس شخص کو محمڈن لاء یاد کرادیں یا چند ریفریشنر کورس کرادیں تو کیا وہ اسلامی قانون کا ماہر ہوجائے گا۔ دنیا کی کوئی یونیورسٹی خواہ غیر مسلم کی کیوں نہ ہو اس کو اسلامی قانون کے ماہرین کی ڈگری دے دیں گے تو کیا ایسے شخص کو آپ اسلامی عدالت کا جج یا جسٹس بناسکتے ہیں۔

کے

دورے پر کیا تو چونکہ وفد میں واحد عربی دان جج میں ہی تھا اس لئے زیادہ تر جج صاحبان کی گفتگو مجھ سے ہی رہی۔ اس میں الازہر یونیورسٹی کے جناب الامام الاکبر اور سعودی عرب سے مفتی اعظم جناب عبدالعزیز بن باز اور ریاض کے سپریم کورٹ کے چیف جسٹس نیز عالم اسلام کی اعلیٰ ترین علمی شخصیات نے انگریزی قانون کے فاضل جج صاحبان کی شریعت اسلامیہ میں تہی دامنی دیکھ کر انتہائی افسوس کا اظہار کرنے لگے۔

نوٹ: ڈاکٹر مفتی شجاعت علی قادری نے انکشاف کیا کہ محترمہ ایڈووکیٹ رشیدہ پٹیل نے نفاذ قانونِ شریعت کی مخالفت کرتے ہوئے ہائی کورٹ میں Writ داخل کی کہ قانونِ شریعت کا نفاذ پاکستان میں اگر ہو گیا تو قوم پر ظلم ہوگا اس کا اطلاع کسی صورت میں پاکستان کے لئے فائدہ مند ثابت نہیں ہوسکتا۔ ان کے مشیر قانون جناب خالد اسحاق صاحب ہیں اور انہوں نے اس Case کی ہائی کورٹ میں نمائندگی کی ہے۔ مقدمہ زیرِ بحث ہے۔ [1]

✶ ✧ ✢ ✶ ✧ ✢

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(1) Interviewed by the Reseach Scholar

جناب محمد طاسین صاحب سے ملاقات

آج پاکستان میں نفاذِ شریعت کا مطالبہ زوروں پر ہے اور ضرور ہونا چاہیے کیونکہ پاکستان بنانے والوں نے نہایت زور و شور کے ساتھ یہ دعویٰ کیا تھا کہ ہم مسلمان اپنے دین کی بنا پر جو زندگی کے تمام امور و معاملات کے متعلق جامع نظام حیات ہے ایک الگ ملت و قوم ہیں اور چونکہ متحدہ ہندوستان میں جہاں غیر مسلموں کی بڑی اکثریت ہو نا ممکن ہے کہ ہم اپنے دین کے مطابق اپنی پوری زندگی گزار سکیں جو بحیثیت مسلمان کے ہم پر لازم ہے لہذا ہما قومی مطالبہ ہے کہ آزادی کے بعد ہمیں اس ملک میں ایسا خطہ زمین ملے جس کے اندر ہماری آزاد مملکت ہو اور اس میں ہم آزادی کے ساتھ اپنے دین کے مطابق زندگی بسر کر سکیں مطلب یہ ہے کہ ہمارے دعوہ مذکورہ کا تقاضا ہے کہ پاکستان میں اسلامی نظام شریعت ضرور نافذ اور رائج ہو۔ علاوہ ازیں پاکستان کے باشندوں کی عظیم اکثریت دین اسلا کو مانتی اور اپنے آپ کو مسلمان کہتی ہے۔ لہذا اس کا بھی یہی تقاضا ہے کہ پاکستان میں شریعت کا نفاذ ہو اور مسلما اپنی انفرادی اور اجتماعی زندگی تعلیماتِ اسلام کے مطابق بسر کریں کیونکہ قرآن مجید میں ارشاد الہیٰ ہے۔ یاایھا الذی امنو ادخلو فی السلم کافتہ ولاتتبعو خطوات الشیطان الایتہ ترجمہ "اے وہ لوگو جو ایمان لائے ہو پوری طر اسلام میں داخل ہو جاؤ اور شیطان کے نقوش پر نہ چلو یعنی اس کی پیروی نہ کرو۔"

بہر حال مذکورہ دلائل کی بناء پر پاکستان میں شریعت اسلامی کا نفاذ اس کے بننے کے فوراً بعد شروع ہو جانا چاہیے تھا لیکن افسوس کہ 45 سال گزر گئے اور شریعت کا نفاذ عمل میں نہ آسکا شریعت کا نفاذ عمل میں نہ آسکنے سے مر شریعت کا وہ حصہ جو اجتماعی زندگی کے معاشرتی، معاشی، سیاسی اور ثقافتی پہلوؤں سے تعلق رکھتا ہے وہ حصہ مر نہیں جو عبادات اور پرسنل لاء نکاح طلاق اور وراثت وغیرہ سے، تعلق رکھتا ہے کیونکہ اس دوسرے حصہ پر متحد ہندوستان میں بھی عمل ہو سکتا تھا چنانچہ ہندوستانی مسلمان آج شریعت کے اس حصہ پر بخوبی عمل کر رہے ہیں عبادات اور مذہبی رسوم ادا کرنے سے، ان کو کوئی روکتا ہے اور نہ مختلف تہوار منانے سے ان کوئی منع کرتا ہے بلکہ

جس حصہ پر عمل کرنے کے لیے پاکستان بنایا وہ شریعتِ اسلام کا اجتماعی زندگی سے متعلق حصہ ہے بہر کیف یہ ایک حقیقت ہے کہ 45 برس کے بعد اس طویل عرصہ میں پاکستان کے، اجتماعی نظام میں کوئی بنیادی تبدیلی عمل میں نہیں آئی۔ جو اجتماعی نظام قیام پاکستان کے وقت رائج و موجود تھی اہی آج تک رائج و موجود ہے۔ معاشرتی نظام بھی وہی ہے جس میں ذات پات اور نسب و خاندان کی بنیاد پر لوگوں کے، درمیان اعلیٰ و ادنیٰ اور شریف و ذلیل کی تفریق و درجہ بندی اور بنیادی انسانی حقوق میں تفاوت اور کمی بیشی پائی جاتی تھی۔

معاشی نظام بھی وہی جاگیردارانہ اور سرمایہ دارانہ ہے جس میں ملکی دولت اور وسائل دولت پر معدودے چند جاگیردار اور سرمایہ دار قابض ہوتے اور اپنی زر و زمین کی بنیاد پر تقریباً پچانوے فیصد محنت کش کسانوں اور مزدوروں کا استحصال کرتے اور ان کی مجبوری سے ناجائز فائدہ اٹھاتے ہیں اور جس میں ایک طرف کروڑوں اور اربوں پتی دوسری طرف کوڑی کوڑی کے محتاج اور معاشی بدحالی میں مبتلا ہوگ ہوتے ہیں، جس میں ربُو قمار اور سود اور جوئے کا عام چلن و رواج ہوتا ہے اور سرمایہ دار اور محنت کش کے مابین نزاع و کشمکش کا سلسلہ برابر جاری رہتا ہے۔ بعض لوگوں کے لئے معاشی ترقی کے راستے کھلے اور بعض پر بند و مسدود ہوتے ہیں۔ جس میں متعدد سیاسی پارٹیوں کا وجود ضروری ہوتا اور حزب اختلاف اور حزب اقتدار کے درمیان کشمکش کا سلسلہ برابر چلتا رہتا ہے اور جس میں عموماً دولت مند اور بااثر افراد ہی الیکشنوں میں کامیاب اور مناصبِ حکومت پر فائز ہوتے ہیں۔ بلکہ سچ پوچھئے تو مذکورہ سیاسی نظام پاکستانی معاشرے کے مخصوص حالات سے مطابقت نہیں رکھتا یہی وجہ ہے کہ برابر ناکامیوں سے دوچار رہتا ہے اور چل نہیں پاتا۔ ثقافتی نظام بھی وہی ہے جس میں واحب، کھیل کود، ناچ گانے، تمثیل و ڈرامے اور تہوار منانے کے بیہودہ طور طریقوں کو خصوصی اور بنیادی اہمیت دی جاتی ہے اور ممتاز کھلاڑیوں، موسیقاروں، گویوں، رقاصوں اور اداکاروں و فنکاروں کو قومی اعزازات سے نوازا جاتا ہے۔

بہرحال یہ ایک امر واقعہ ہے کہ پاکستان بنتے وقت معاشرتی معاشی، سیاسی اور ثقافتی طور پر جو اجتماعی نظام موجود تھا وہی پینتالیس برس گزر جانے کے بعد بھی موجود ہے۔ اس میں کوئی اصولی و بنیادی فرق نہیں آیا یا یوں کہہ

امی نقطہ نظر سے اس سے کوئی اساسی اور بنیادی تبدیلی نہیں آئی۔

لہذا اس حقیقت حال کے پیش نظر بجا طور پر ذہنوں میں یہ سوال ابھرتا ہے کہ باوجود مسلمانوں کے شدید خواہ کے پینتالیس سال میں قائم ہونے والی مختلف حکومتوں کی چاہتوں اور کوششوں کے پاکستان کا اجتماعی نظام کیوں نہ بدلا اور اس کی جگہ اسلام کا اجتماعی نظام کیوں قائم نہیں ہوا۔ آخر اس کی وجوہ کیا ہیں اور کیا ہو سکتی ہیں۔

یہ سوال اس لحاظ سے بڑا اہم ہے کہ جب تک اس کا صحیح جواب سامنے نہ ہو اور ان اسباب اور مواقع کی صحیح پر تشخیص اور نشان دہی نہ ہو۔ جن کی وجہ سے باوجود خواہش اور کوشش کے پاکستان میں اب تک اسلام کا اجتماعی نظا قائم نہیں ہو سکا ہم آئندہ بھی اس مقصد میں کامیاب نہ ہو سکیں گے بلکہ ٹامک ٹوئیاں مارتے اور چکر میں پڑے رہ گے۔

نوٹ: انہوں نے مندرجہ ذیل لوگوں کی شریعت اسلام کا نفاذ نہ عمل میں آنے کی وجہ بتائی ہے۔ (1)

1۔ علمائے دینِ اسلام کا آپس میں اختلاف

2۔ سیاسی جماعتوں کی بے اعتنائی اور ذاتی مفاد

3۔ حکومت کی بے رخی

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Interviewed by the Research Scholar
(1) Mr.M.Tasin was a popular, well known religious scholar, an intellectual and famous orator in Pakistan.

Islamization has been our ambition, our problem, and also a source of disillusionment at our performance. Why this has been so, is a task to which all of us, and particularly those dealing with national priorities in the field of planning must revert their attention.

Islam provided us the core-values for our identity even before we launched ourselves on our post-independence life as an independent state. After independence no model was available on which we could base our constitution. The Ulema agreed on twenty two general principles of moral and constitutional import but could not frame a modern Islamic constitution. Others agreed on even less. For almost a decade the Pakistani community could not go beyond this point...... and persistent lament about our failure in terms of concrete achievement itself needs some analysis....

The groups most committed to Islamization could offer few concrete suggestions and appeared to be content with "Objectives Resolution" appearing as Preamble to the Constitution, some principles stated in the unenforceable part known as "Principles of State-Policy" and a machinery devised to advise the method for gradual introduction of Islam through two constitutional bodies namely Institute of Islamic Research and the Council of Islamic Ideology. They hailed the 1956 constitution as an Islamic constitution. It appears that within their own minds they were not very clear about what more to ask for.....

The official explanation for such an arrangement was that there were many complicated problems requiring deep study and hold ijtihad and that lot of work was necessary before an Islamic interest free economy could be made operational........

Over the years the Council of Islamic Ideology put in a large number of recommendations but the Governments did not make any special efforts towards implementing them. As regards the study of the difficult problems holding up the process of Islamization, little ground work was done or even attempted together and assigned the task of designing an economic model on the basis of the Quranic injunctions appertaining the field of economic management. Similar was the neglect in the constitutional field. It was only after 1977 that Government showed interest in some fields and asked for prompt recommendations in regard to them, with the result that in some spheres of choice of the government, some recommendation were implemented:

The present situation is charged with grave mutual doubts. Everyone's motives are suspect, more so of the rulers. We would need a much greater quantum of mutual confidence to make the sacrifices necessary to get out of the present quagmire. Obviously, therefore, irrespective of our desire for great achievements we first need to increase unity in our ranks......

For the leadership of the new Pakistan nation which has resolved to make Quran and Sunnah the foundation of its social structure as reflected in the Objectives Resolution, the nurturing of the above values was the prime task. The record of our performance in regard to these values is indeed poor. Those to whose lot fell the implementation of these values unfortunately, had neither studied their history wisely nor imbibed these values deeply. In fact they were new to both power and leadership, and did not know the heavy mortgage both carry. Their defacto model for exercise of power was imperial. It is designed to place distance between the rulers and the ruled. They succeeded only in aggravating the problems by extending this distance......

The unfamiliarity with Islamic political theory co-existed with familiarity and admiration for the received democratic theory of State and Government. The task of separating to the ideal of Quran from medieval theory and political theory appeared too gigantic and task for Muslim League oriented elite of the first decade of Pakistan. Few of them knew Arabic. Most had studied Islam through secondary or western sources. There were many intellectual and religious problems for which the orthodox religious elites provided no solution. In any event the majority of religious scholars has neither reconciled with the idea of Pakistan nor accepted the leadership of Mohammad Ali Jinnah. The emerging leadership of Pakistan was in no need to handover Pakistan to the 'the mullahs' who had neither played a positive role in the making of Pakistan nor appeared qualified to lead in making modern prosperous Pakistan. It apeared to the existing political and judicial leadership that accepting Islam as the sole basis for distribution of political power word open a wide gate for ultra conservative and irrational elements of the society.....

The scorn showered on the Ulema in the "Munir Report" neither put the Ulema on the defensive nor persuaded the people to move away from the Islamic commitment. Neither the Ulema succeeded in charming the people with the

Thirty years of musical chairs between secularized leadership and armed forces brought forth a martial law administration that took political power from Pakistan Peoples Party and the uniting flag of Islam from PNA.

For the first time in the life of the national educated elites were forced to face the challenge of Islam. Islam provided the basic identity, also vitality to stand up in times of adversity but the task of building an attractive and satisfying future was by no means easy.

The Ulema thought that their times had come. They had no clear idea about what the nation expected of them. A few changes in the penal law in the name of Islam, change of a few sections of the Evidence Act and Zakat collected on bank deposits of the middle class was all they could claim as their contribution towards Islamization.......

The built-in inequities of the economic order distort the Zakat system also. The result is that the benefits that are expected do not materialize. As a cumulative result the existing frustrations are compounded, so that even the image of islam is seriously tarnished, and new doubts about its viability start floating around. Powerful vested interest attempt foreclosure of future steps in the process of Islamization by adding fuel to fire. The truth of the matter is that current economic order conflicts with the principles of economic management of Islam at many points, in fact in the very perception of what would be a fair economic model..

Islamization would need a total reconstruction with radical rearrangement of the socio-political order. Patchwork would not do. And it is precisely ill-conceived patch-work which is being resorted to in the name of graduation....

The modernists who do not feel bound by the Islamic principles consider the muslim punishments barbaric and outdated. They feel imposition of such punishments would make people cruel and ruthless......

There is considerable validity in most of this criticism. To the extent that the government has failed to respond to it, the problems remain unresolved. Disappointment keeps increasing.

Lack of Public participation and absence of dialogue with the rulers constantly add to the frustration. Massive use of propaganda about State's commitment and achievements in the field of Islamization, without adequate reflection in deeds, tends to turn the widely felt frustration, against Islam's own viability.....

It now remains to take notice of the Shariat bill that was introduced in the Senate for the declared purpose of introducing Shariat as the fundamental law of the country.

The technical flaws apart, the movers of the bill wanted not merely the supremacy of Quran and Sunnah, but along with all the traditional institutions and interpretations. Ijma and opinions of some well-known jurists were also to be included in the definition of Shariat. The Shariat bill's main purposes appeared to be legislative cover for the prevalent conservative Islam in the sub-continent.

The opposition to the bill came from various quarters :

1. The shiahs opposed it because it was seeking legislative cover for the universal applicability of Sunni Islam.

2. Schools like Ahl-Hadis because imposition of Hanafi Islam was sought:

3. Members of the Parliament, because it would interfere with their legislative supremacy and would place the Ulema and the Shariat Court above the national legislature.

4. The last source of opposition were persons who thought:

   i) that legislative approval of the bill would re-inforce the sectarian divisions within the Ummah.

   ii) it would give the proponents of conservative tradition of interpretation of Islam and undeserved status and protection.

   iii) development process would be thwarted.

   iv) the universal and liberal elements of Islam would face undeserved and unnecessary opposition.

   v) Such legislation would be contrary to the basic interest of Islamic teachings, and the fact that:-

   vi) the basic objective of the Shariat bill having already been achieved by the addition of Article 2A to the Consitution, it was un-necessary.

secure support of some religious political parties, the bill never got visible public support. It clearly did not reflect the vision of Islam, that the people of Pakistan shared with their Quaid-e-Azam.....

Shariat demanded a higher loyalty than the loyalty to the ruler or the man made rules. Shariat was a far higher law than what the rulers of the day could make.

The obligation to guide the community was Divine: the second source was the Sunnah of the Prophet (SAW) . Thereafter the task of applying the first principles in the manner of the prophetic example was of the learned and the morally sensitive members of the Ummah. The Shariat placed the burden on the whole Ummah as trust and application and interpretation of Shariat was henceforth not to be the privilege of any class by birth or otherwise did not permit it to be confined or contained within any class within the Ummah. The right and obligation to speak on any issue was provided by a perons's knowledge and moral sensitivity and not by the official status. The right was fundamental and fully authorized by the Quran. Not only were the knowledge amongst the belivers under a direct mandate to constantly review the current methodologies and institutions within the community, (S..9.122) but to protest against them when felt the Ummah having been dealt with unfairly i.e. by criteria other than those of Shariat (S.42.39).

No clear and comprehensive conceptual framework was sought to be developed before launching reform programmes on adhoc basis. Having failed in the collective duty of finding the 'best way' in the existing space-time situation an easier option was adopted. Some historical example was picked up and sought to be used as a total solution of the social problem. Sometimes it was only partially adopted with a loud promise of future expansion. Enforcement of Zakat is a typical example. It was not collected from all the items from which it is to be collected because the problem of its relationship with the taxation structure was not resolved. On the other hand, the problems of other sects in regard to Zakat were also not adequately considered and resolved.

The ten years of the old regime were spent in coaxing a reluctant bureaucracy to submit to the Nizam-e-Salat and then to Nizam-e-Zakat. Both of which were adopted but with reservation. The jurisdiction that was conferred on the various High Courts for the purpose of implementation of the Shariat was not entirely welcomed with the Ulema who felt that they did not have the sort of Share they wanted in the process. There were although too many judges with training in modern law who were unwilling to accept the predominance of the Ulema. The issue raised and the debates that ensued on presentation of individual views on Quranic Exegesis and application of the Sunnah did not add to the strength of the Ulema. The lawyers were quick to discover considerable support for more radical views in the newly discovered or published sources of the firt three centuries of Islam....

In the Constitution of 1973 article 2 declares that "Islam shall be the State relgion of Pakistan". Several unsucessful attempts were made between 1973 to 1977 to base an argument upon this article to the effect that the basic structure of the State shall be Islamic that the fundamental rights given by the Quran and Sunnah were absolute i.e. could neither be suspended nor abolished nor abrogated and that the State power was liable to be excercised within the larger value oriented framework by the Shariat....

It was obvious that the jurisdiction of the Federal Shariat Court did not extend to all the laws in force nor could Federal Shariat Court grant relief to any party in individual cases. Now article 2A placed as it was immediately after article 2 made it the duty of the superior courts that wherever their jurisdiction was not expressly excluded in this behalf by virtue of article 203A & 203G to grant relief to applications in terms of the laws as they would be subject to article 2A. It made the Objective Resolution substantive part of the Constitution to be given effect as such....

According to the Quran every individual is bound by a covenant with Allah to submit to His Shariat and to no one else. The prime duty of the State or the ruling agencies is to help each individual discharge the obligation of this covenant. The human rights to protection of life, honour and property can either be suspended, abridged nor abrogated. They place limits on State power. This obligation was often forgotten.....

performance by the state in every aspect of its duties. Understandably they do not feel motivated to pay what the governments demand. The rulers as presented by bureaucracy appear to them as robbers. Almost every moral system justifies a ruse to escape robbery or unjustified injury. Over a period of time rulers curse the people as cheats and people reciprocate the compliment by considering them all as robbers of different order. Mutual confidence is thoroughly eroded. This factor by itself brings in massive distortions in the relations between the state and the individual and even between individuals...

Enlarging scope of intervention is not remedy for inadequate guidance, poor control and worse administration in the fields already monopolized by the State. Putting house in order in these field would be pre-requisite for progress towards the Islamic ideals![1]

Islamization in Pakistan

By

(Khalid M. Ishaque)
Senior Advocate
of
Supreme Court of
Pakistan.

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(1) He is expert in Constitutional law, an eminant scholar and intellectual of Pakistan.

Initially, the council of Islamic ideology, examined prevailing laws to determine whether any of these are un-islamic and to make recommendations. In December 1981, the council submitted its first report to the Govt on islamization of 51 laws enacted during the period 1836 to 1871. Its second report was submitted in May 1982. in respect of the laws enacted during the period 1898 to 1906. At a meeting in April, 1982, the Council examined laws from 1908 to 1919. This exercise continued for some time. The reports of the council which were recommended by the Government have been kept confidential except for some press reports.

The real issues before the nation are whether the laws already enforced and proposed before the parliament are in accordance with the Fundamental Rights and in the true sense Islamic ? and will they succeed in Islamicising life in Pakistan ?

Mr. Khalid Ishaque, prominent lawyer and Jurist comments ; " The task of introducing the prime positive values of Islam like the absolute dignity of man, freedom, justice coupled with comparison, equality coupled with brotherhood of Ummah, complete accountability has not even begun "

This rings true, the penal laws and the evidence law introduced to bring in Shariah law have not reduced crime or had any other beneficial result. The Zakat Ordinance had very preceptable effect. The amendment to the Bank laws have not in any sense removed Usury or even real interest from bank transactions.

Another more important issue is : what is the extent to which the people of Pakistan are in favour of Islamization. The four Elections have shown that they have not accepted the Politico - Religious parties by refusing to return them in large numbers to the assemblies. Through Islam has been the banner of major political parties and persons contesting election - the extent and nature of commitment to Islam and its interpretation is still an open issue. There are diverse views.

Other questions are : Is it practicable at the end of twentieth Century with the fast moving innovations in science and technologies to move centuries back to implement the letter of Law ?

Diverse opinions concerning the interpretation and application of the Holy Quran and Sunnah are rampant. The nature and extent of future Islamization of Laws in Pakistan is an open issue. It is only with the sincere approach and commitment to emulate the pure principles and ethics of Islam, that the purposes and intrinsic values of Islam can find place in the laws, and Socio-economic and political fabric of life in Pakistan.

Islamization of Law in Pakistan
By
Rashida Patel
(Legal Practitioner)
Advocate of High Court Karachi.

Since the creation of Pakistan, the basis of its legal system has remained undefined. Prior to Hadood Ordinance Pakistan's legal system was a mixture of colonial legislation, inherited usage and personal Laws (mostly in family matters). While the fundamentalists always wanted to enforce Islamic Laws. They were themselves not clear as agreed on the basic concept of an Islamic State. A Law reform commission was set up in 1958 which Cautiously pointed out the danger of involving religion and consequently religious Scholars of "Old learning" who would obstruct any reforms. Nevertheless a strong lobby of obscurantists kept working for changing the entire legal system to anIslamic form. This lobby despite being active, organized and politicized lacked and still lacks mass popular support. Their inability to capture public support is an indication of the people's desire to keep religion and politics separate. Perhaps another reason for lack of support to the Islamic political parties is their pre-partition political stance. Most of them opposed the creation of Pakistan and strongly criticised the founder of the nation, Muhammad Ali Jinnah. Despite the lack of overall popular support the Islamic political parties carry a group of dedicated followers, with enough strength, organization and clout to keep all Governments from implementing a progressive secular policy. Once a step ostensibly towards Islamization has been taken, no government can reverse it.

Fundamentalists have always tried to capture power in the slogan of Islam. They have however, failed to do so through the political process.

The first law introduced by Zia-ul-Haque in the process of Islamization were the Hadood Ordinances. These laws remain controversial to this day. While many agree that the laws are far from perfect and few are willing to ask for their total repeal. Even amongst the fundamentalists there is body of opinion that these laws do not truly reflect the precepts and spirit of Islam.

Interestingly, all those group are looking at the Hadood Ordinances more in the light of what they think they are, then what they actually are.

It is widely accepted that president Zia-ul-Haque had used Islam as an intrument to consolidate his power. It was not a matter of genuine concern with him. Hadood Ordinances were also one such device. The framing and implementation of Hadood Ordinances were so slipshod that it lent no crediability to the object of Islamization. Nevertheless once the label of religion is attached to the law, regardless of its merits, it becomes [illegible]

Chapter - 4 (v)

Inter Views With

Public Representatives

سوال نمبر ا : ہمارے دستور کی رو سے ہمارا ملک ایک اسلامی مملکت جمہوریہ ہے لیکن عرصہ 45سال سے اسلامی قانونِ شریعت نافذ نہیں ہوا۔ اس کی وجہ کیا ہے؟

سوال نمبر ۲ : حکومتِ پاکستان کو کیا مشکلات درپیش ہیں جو ان کو قرآن و سنت پر عمل پیرا ہونے سے روکتی ہیں؟

سوال نمبر ۳ : کیا اس قانون کے نفاذ میں کوئی سیاسی، دینی یا لادینی (Secular) جماعتیں آڑے آرہی ہیں آپ سے وضاحت چاہتا ہوں؟

سوال نمبر ۴ : ملک کے علمائے دین، دانشور، فقہا اور ماہرین قانون نے قانونِ شریعت کے نفاذ میں کیا خدمات انجام دی ہیں اور اس طویل تاخیر کی کیا وجوہات پیش کرتے ہیں؟

سوال نمبر ۵ : پاکستان کی مسلمان عوام کیوں خاموش ہے کیا وہ بھی اس قانون کا نفاذ غیر ضروری سمجھتی ہے۔ آپ کا نقطہ نظر اس بارے میں کیا ہے؟

جناب حمد صلاح الدین صاحب - مدیر تکبیر سے ملاقات

ایک طالب علم پی ایچ ڈی ریسرچ اسکالر کی حیثیت سے میں نے اپنا تعارف کرایا اور عرض کیا کہ پی ایچ ڈی میں میرا مقالہ Implementation of Shariah Law in Pakistan اس پر آپ کی رائے سے مستفیض ہونا چاہتا ہوں۔

موضوع گفتگو: سوال یہ ہے کہ پاکستان میں قانون شریعت کا نفاذ آپ کی رائے میں اب تک کیوں عمل میں نہیں آیا۔ اس کے ذمہ دار کون ہیں؟

1۔ آیا حکومت ہے
2۔ سیاسی جماعتیں ہیں
3۔ قانون کے مصنف ہیں
4۔ مشیرانِ قانون ہیں
5۔ ملک کے دانشور ہیں
6۔ عوام ہے۔

جواب: عوامی انتخاب کے بعد اکثریت میں جو سیاسی جماعت کامیاب ہوتی ہے وہ حکومت بناتی ہے جو آپ کو معلوم ہی ہے۔ اس کے علاوہ دیگر جماعتوں کے امیدوار بھی جب Votes میں اکثریت سے جیتتے ہیں تو وہ بھی حکومت کے عہدے داروں میں شامل ہوجاتے ہیں اور پھر ایک پوری جماعت تیار ہوجاتی ہے اور حکومت کے چلانے میں ملکر ذمہ داریاں سنبھال لیتے ہیں۔ یہی لوگ پارلیمنٹ کے ممبران ہوتے ہیں جہاں قانون سازی کا کام عمل میں آتا

ہے اکثریت کی حمایت حاصل کرنے پر وہ بل قانونِ ملک کی صورت اختیار کرلیتا ہے اور آخری مرحلہ مجلس شوریٰ میں پیش ہو کر اکثریت کے بل بوتے پر یہ منظوری حاصل کر کے ملک کا قانون بن جاتا ہے۔

پاکستان میں انتخاب کی مہم میں غریب لوگ حصہ نہیں لے سکتے کیونکہ یہ امراء کا کھیل ہے۔ غریب کے پاس اتنا پیسہ نہیں ہوتا اور نہ اس کا انتظام کرسکتا ہے کہ انتخاب لڑے۔ آج تک پاکستان میں امیر لوگوں نے ہی انتخاب لڑا ہے اور جیت کر وہی وزراء اور ممبران پارلیمنٹ بنتے ہیں۔ اسے امراء کی حکومت سمجھیں (Oligarchy) یا جاگیر داری نظام حکومت سمجھیں (Feudalism) دونوں ایک ہی ہیں اور ان کی حکومت آج تک چل رہی ہے صرف آدمی بدل جاتے ہیں۔ وزراء بھی یہی ہیں اور پارلیمنٹ کے ممبران بھی، اختیارات ان ہی میں بٹ جاتے ہیں اور حکومت کی داغ بیل ڈال دی جاتی ہے۔

چونکہ اکثریت ان کی ہوتی ہے اس لئے ان کے مفاد کے خلاف، کوئی بل پاس نہیں ہوسکتا ان کے مفادات قوم کے مفادات نہیں ہوتے بلکہ ان کے ذاتی یا ان کے گروپ کے ہوتے ہیں۔ چونکہ شریعت بل آج تک جب بھی پیش ہوا ہے وہ کبھی پاس نہیں ہوا اور اُس کا نفاذ پاکستان میں ناممکن ہو کر رہ گیا ہے جب سے پاکستان بنا ہے آج تک یہی کہانی چلتی رہی اور شریعت بل پہلے مرحلہ میں پاس ہوتے رہے اور آخر میں نامنظور ہوتے چلے گئے۔

1۔ جاگیردار کبھی نہیں چاہیں گے کہ ان کی جاگیر چھین جائیں یا وہ حکومت کو واپس کر کے اتنی ہی اپنے پاس رکھیں جو قانونِ شریعت میں جائز ہے۔ اس لئے یہ قانون ان کے لئے نقصان دہ ہے اس لئے وہ اس کے حامی نہیں ہوسکتے۔

2۔ امراء اپنی جائیداد کے بموجب کسی ایسے قانون کی حامی نہیں بھریں گے جو ان کی جائیدادوں میں ٹیکس کی صورت میں زکواۃ کی صورت میں اثر انداز ہو یا تقسیم جائیداد جو قانون شریعت نے دیا ہے کے حامی ہوں۔ اس لئے وہ ایسے قانون کے نفاذ کے خلاف ہیں اور رہیں گے۔

3۔ علماء دین جو سیاسی لیڈر کی حیثیت میں اپنی پارٹی کے ناخدا بھی ہیں اور ان کا مذہبی School of

حاصل نہیں ہوئی۔ یعنی

(i) شیعہ مذہب کے مسالک اپنے ہیں

(ii) دیوبندی گروپ کا مسلک اپنا ہے

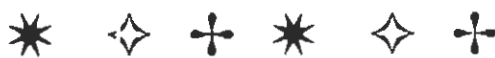
(iii) بریلوی گروپ کا اپنا مسلک ہے

(iv) اہل حدیث گروپ کا مسلک بھی اپنا ہے

اسی طرح دیگر مذہبی جماعتیں اپنے اصول، قواعد و ضوابط کو سامنے رکھ کر حکومت کے شریعت بل سے موازنہ کرتے ہیں بل اگر ان کے بنائے ہوئے اصول یا اعتقادات کے منافی ہے تو بل کو رد کرنے میں آواز بلند کریں گے اور ووٹ اس کے خلاف دیں گے۔ اسی طرح موجودہ سیاسی جماعتیں اور بھی ہیں جو Secular نظام کو پسند کرتی ہیں اور اس کی حامی ہیں وہ خدائی قانون کے خلاف ہی ووٹ دیں گی۔

ان حالات کے پیش نظر قانونِ شریعت کا نفاذ یہاں ناممکن نظر آنے لگا ہے چوالیس سال گزر چکے ہیں اسلامی مملکت میں اسلامی قانون کی کوئی اہمیت نہیں اور نہ لاگو ہوسکتا ہے۔

اسی طرح قانون دان اور انصاف کرنے والے جج صاحبان جو ایک ہی لڑی کے موتی ہیں دونوں طبقے انگلش لاء (Man-made-Law) کے ماہر ہیں اسی پر وثوق کے ساتھ بحث کرسکتے ہیں اور فیصلے دے سکتے ہیں اور حوالہ جات کے مقدمے کے فیصلے پیش کرکے حسب منشا فیصلے لے سکتے ہیں لیکن افسوس یہ ہے کہ ان کو قانونِ شریعت سے کوئی دلچسپی نہیں۔ نہ اس کا گہرا مطالعہ ہے اور نہ کرنا چاہتے ہیں یعنی نہ وکلاء نہ جج صاحبان اس لئے نفاذ قانونِ شریعت کے یہ لوگ بھی بالکل حامی نہیں ہیں۔ اگر یہ لوگ خدا کے قانون کا احترام کرتے ہوئے دلچسپی لیں اور اس کے نفاذ میں زور دیں تو بھی اس کے نافذ ہونے کے کافی امکانات پیدا ہوسکتے ہیں۔

رہی عوام ان کی وہی رائے ہے جو ان کے لیڈروں کی رائے ہے۔ (1)

✷ ✧ ✢ ✷ ✧ ✢

جناب نیّر علوی صاحب - ریذیڈنٹ ایڈیٹر نوائے وقت سے ملاقات

میرے پانچ سوالوں کے جواب میں انہوں نے فرمایا

1 اس میں کوئی شک نہیں کہ برصغیر کے مسلمانوں نے اسلام کے نام پر پاکستان قائم کیا تھا اور تح
پاکستان کے رہنماؤں نے وقتاً فوقتاً اس عزم کا اظہار کیا کہ پاکستان میں قوانین اور معاشرے کو اسلامی اصو
کے مطابق ڈھالنے کی کوشش کی جائے گی بعد میں اس عزم نے تحریک نفاذِ شریعت کی صورت بھی اختیا
جہاں تک پاکستان کو اسلامی جمہوریہ قرار دینے کا تعلق ہے، تو یہ آئینی شق ایک حد تک تحریکِ پاکستان
دوران کئے جانے والے وعدے کا اقرار اور کسی حد تک ایک روایتی اور رواجی بات ہے۔

2 اس پر آئینی شق پر عمل درآمد کا انحصار ارکانِ پارلیمنٹ کے ارادے اور عمل پر منحصر ہے جس
فقدان پایا جاتا ہے۔ پارلیمنٹ کے ارکان کی اکثریت کا تعلق استحصالی طبقے سے ہے۔ استحصالی طبقہ پارلیمنٹ
ہی نہیں دوسرے شعبوں میں بھی مؤثر ہے۔ اس کے ہوتے ہوئے اسلامی نظام یا کسی بھی فلاحی نظام کا نا
ہونا آسانی کے ساتھ ناممکن ہے۔

3 حکومتِ پاکستان مقننہ، انتظامیہ اور عدلیہ پر مشتمل ہے۔ یہ تینوں ادارے انگریزوں کے دیئے ہوئے نظام کے
عادی ہو چکے ہیں۔ موجودہ نظام میں جو سہولتیں، گنجائشیں موجود ہیں وہ ان اداروں اور ان کے اعمال کو قرآن
سنت کی درست اور کٹھن راہ پر چلنے سے باز رکھتی ہیں۔

نعرے بازی کی حد تک تو سب لوگ نظامِ شریعت کے نفاذ کے متمنی نظر آتے ہیں لیکن عملاً اس مقصد کے
حصول کے لئے ... [illegible]

آتی ہیں لہذا ارادی اور غیر ارادی طور پر وہی ہو رہا ہے جو لادین طبقہ چاہتا ہے۔

4 علماء دین، دانشور، فقہا اور ماہرین قانون جلسے جلوس اور تقریر و مضامین کی شکل میں جتنا کچھ کر سکتے ہیں وہ کر رہے ہیں۔ پارلیمنٹ اور انتظامیہ پر ان کا زور نہیں چلتا۔ البتہ وہ کبھی کبھی رائے عامہ کو حرکت میں لانے میں کامیاب ہو جاتے ہیں ایسے مواقع پر چند قوانین، کمیشن کونسلوں کا قیام و نفاذ دیکھنے میں آتا ہے۔ جوں جوں رائے عامہ کا دباؤ کم ہوتا ہے یہ ساری باتیں یکے بعد دیگرے پس منظر میں چلی جاتی ہیں۔ بہر حال مذکورہ قوتوں کو گاہے بگاہے مہمات کی بدولت برائے نام پیش قدمی کا سلسلہ جاری ہے کبھی کبھی تو یہ بھی غنیمت معلوم ہوتا ہے۔ یہ بھی نہ ہو تو لادین عناصر کی یلغار سب کچھ بہا لے جائے گی۔

5 پاکستان کے عوام دوسرے تمام معاملات کی طرح اسلامی نظام کے نفاذ میں بھی بے بس ہے۔ وہ اپنی خاموشی کو ختم کر کے کئی بار سڑکوں پر آ چکے ہیں لیکن رائے عامہ کا یہ دباؤ اور اظہار ابھی انقلاب کی صورت اختیار نہیں کر سکا یا یوں کہہ لیجئے کہ پارلیمنٹ کو بھر پور طریقے سے متاثر نہیں کر سکا۔ قصور عوام کا نہیں کمزوری اور خامی اپنی جماعتوں کی ہے۔ جب تک دائیں بازو کی سیاسی اور دینی جماعتیں مضبوط، منظم متحرک اور ترقی پسند قیادت اور ٹھوس لائحہ عمل فراہم نہیں کریں گی وہ خود بھی ناکام رہیں گی اور عوام بھی بے بس و خاموش تماشائی بننے پر مجبور رہیں گے۔ (1)

✳ ✧ ✢ ✳ ✧ ✢

جناب ڈاکٹر محمد حیات ملک صاحب مدیر طلوع اسلام

قانون شریعت اس وقت تک پاکستان میں نافذ العمل کیوں نہیں ہوسکا؟

میری رائے میں اس کی بڑی وجہ یہ ہے کہ موجودہ علماء اور حکمران طبقہ جس طرح کا قانون پیش کرتے ہیں۔ عوام کی اکثریت اس پر متفق نہیں نیز جو قوانین انہوں نے نافذ بھی کئے ہیں عملی طور پر ناقص ثابت ہوئے ہیں اور متوقع نتائج نہیں نکلا۔ عوام عہد رسول کریم ﷺ و خلفائے راشدینؓ کے دور اوّل کا اسلام چاہتے ہیں جبکہ مولوی صاحبان اور حکمران طبقہ انہیں دور ملوکیت کا اسلام اور اس کے فقہی قوانین پیش کرتے ہیں۔ جن میں "فرعون، ہامان" اور "قارون" اپنے اپنے مورچہ بند قلعوں میں محفوظ رہتے تھے۔

علامہ اقبال کی فکر قرآن اور قائداعظم کی دیانت دارانہ قیادت، کی پاکستان کے عوام پر گہری چھاپ ہے۔ اس لئے وہ موجودہ علماء اور حکمران طبقہ کے جال سے بدک رہے ہیں۔ علماء اور حکمران تو اس کا نام نہیں لیتے لیکن اکثر دانشور اب قرآن کا یہ واضح حکم پیش کرر ہے ہیں کہ جو "بما انزل اللہ" کے مطابق حکومت نہیں کرتے انہی کو کافر فاسق اور ظالم کہتے ہیں (۵/۴۴)

خالص قرآن پر عمل سے نہ مولوی صاحبان کی فرقہ فرقہ کی دکانیں بچتی ہیں اور نہ حکمران طبقہ کی رعونت، خاندانی جاگیریں اور لاانتہا سرمایہ بچتا ہے۔ اس لئے شریعت بل میں اس کی گنجائش رکھ لیتے ہیں کہ قرآن کے بجائے اپنی مرضی کے احکام بھی ملا سکیں۔ جنہیں وہ "اسلام، سنت، شریعت فقہ' کا نام دیکر اپنا مطلب نکال سکیں۔ لیکن یہ مرغوب ابھی تک ناکام رہا ہے۔ پاکستان کا ظہور.... نتیجہ ہے علامہ اقبال کے فلسفہ اور قائداعظم کی سیاسی قیادت کا۔ ان ہر دو کا اس قوم کے دل و دماغ پر گہرا اثر ہے۔

علامہ اقبال نے پہلے تو مسلمانوں کو تشخص دیا، خودی کو جگایا اخوت اور قرآن سے وابستگی اور جہد مسلسل کی تعلیم دی۔

ایک ہوں مسلم حرم کی پاسبانی کے لئے ۔ نیل کے ساحل سے تابخاک کاشغر

تو اگر فورہی مسلمان . زیستین ۔ نیست ممکن جز بقرآں زیستن :

خطبہ الہ آباد میں کہا

"میری آرزو ہے کہ پنجاب، سندھ، سرحد اور بلوچستان کو ملا کر ایک درجہ ریاست قائم کی جائے

اس مملکت کے قیام سے کیا ہو گا؟ فرمایا

"اس سے اسلام کو اس امر کا موقع ملے گا کہ وہ ان اثرات سے آزاد ہو کر جو عربی ملوکیت کی وجہ سے اب تک اس پر قائم ہے اس جمود کو توڑ ڈالے جو اس کی تہذیب و تمدن، شریعت اور تعلیم پر صدیوں سے طاری ہے۔ اس سے نہ صرف ان کی صحیح معنوں میں تجدید ہو سکے گی بلکہ وہ زمانہ حال کی روح سے قریب تر ہو جائیں گے۔

(اقبال اور قرآن

"ہمارے لئے کشاد کی ایک ہی راہ ہے اور وہ یہ کہ آئینہ اسلام ہر غیر اسلامی رنگ کی جو سخت اور درشت تہیں جم گئی ہیں جس کی وجہ سے اس کا حرکیاتی اور ارتقائی نظریہ یکسر جامد ہو کر رہ گیا ہے انہیں کھرچ کر الگ کر جائے....."

(اقبال اور قرآن "پرویز"

قائد اعظم نے فرمایا

"اسلامی حکومت کے تصور کا یہ امتیاز پیش نظر رہنا چاہیے کہ اس میں اطاعت اور وفا کیشی کا مرجع خدا کی ذات ہے۔ جس کے لئے تعمیل کا مرکز قرآن مجید کے احکام اور اصول ہیں۔ اسلام میں اصلاً نہ کسی بادشاہ کی اطاعت ہے نہ کسی پارلیمان کی نہ کسی شخص کی اور نہ ادارہ کی۔ قرآن کریم کے احکامات ہی سیاست و معاشرت میں ہماری آزادی پابندی کے حدود متعین کرتے ہیں۔ اسلامی حکومت دوسرے الفاظ میں، قرآنی اصول اور احکام کی حکمرانی ہے اور حکمرانی

(تحریک پاکستان صفحہ 596

قرآن نظام کا نفاذ جذباتی کام نہیں۔ اس کے لئے قوم کو سمجھانا اور تیار کرنا پڑے گا۔ ذہنی تیاری ضروری ہے کیونکہ قربانیاں بھی دینی ہونگی سب سے پہلے تو ایک واضع نقشہ تیار کرنا ہوگا کہ اس نظام میں ہوگا کیا کچھ؟ پھر قدم قدم اسے حاصل کیا جائیگا بغیر افراتفری کے۔ محض "ڈنگ ٹپاؤ" آرڈیننس یا شریعت بل پاس کردینے سے تبدیلی نہیں آسکتی۔ (1)

Interviewed by the Reseach Scholar

(1) Dr. M. Hayat Malik, is M.B.B.S. Medical Practitioner in Faisalabad and also Editor of a magzine called TALOOH-E-ISLAM founded by the G.A. Pervaiz who was a reputed religious scholar and a writer in Pakistan.

امید کی جارہی ہے کہ انشا اللہ العزیز مستقبل قریب میں پاکستان میں اسلامی نظام کے نفاذ کا اعلان ہو گا جوں جوں وہ وقت قریب آتا جارہا ہے ملک کے وہ تمام عناصر جو اس ملک میں اسلامی نظام کے نفاذ کو پسند نہیں کرتے۔ طرح طرح کی رکاوٹیں پیدا کرنے اور انواع واقسام کی غلطیاں پھیلانے میں بڑھ چڑھ کر حصہ لے رہے ہیں۔

کچھ لوگ یہ کہہ رہے ہیں کہ اسلامی نظام (العیاذ باللہ) چودہ سو سال پرانا اور فرسودہ نظام ہے جو دور حاظر کے مسائل کو حل نہیں کر سکتا۔

ہمیں حکم دیا گیا ہے کہ آیات قرآنی میں نظام کے نفاذ کیلئے ابھی معاشرہ تیار نہیں ہوا۔ اس لئے پہلے معاشرے کو تیار کیجئے تب اسلامی نظام کو نافذ کیجئے

ایک طبقہ ان متجدد دین کا ہے۔ جنھوں نے اپنے تمام امور کیلئے ماسکو۔ واشنگٹن اور لندن کو قبلہ گاہ بنالیا ہے اور مغربی تہذیب کی ظاہری چمک دمک نے ان کی آنکھوں کو خیرہ اور فکر و نظر کو اسیر کر رکھا ہے۔ یہ لوگ اسلامی حدود وتعزیرات کو وحشیانہ اور اسلام کے نظام معاشرت ومعیشت کو فرسودہ خیال کرتے ہیں حالانکہ صورت حال بالکل برعکس ہے۔ اس کا معاشرہ شکست وریخت کا شکار ہوگیا ہے۔ مغرب میں تہذیب کی روشنی نہیں بلکہ روشنی کی تہذیب ہے' روشنی جل رہی ہے تو لوگ قانون کا احترام کرنے والے اور مہذب و متمدن ہیں اور روشنی گل ہوئی تو تہذیب وشرافت سب رخصت۔

دوسری بات یہ ہے کہ اسلامی نظام صرف چند حدود وتعزیرات ہی کا تو نام نہیں ہے۔ اسلام تو ایک دین اور ایک مکمل نظام حیات ہے جو زندگی کے تمام شعبوں پر حاوی ہے۔ اگر اس ملک میں اسلامی نظام آئے گا تو اس کیساتھ اسلام کا نظام ۔معیشت۔ نظام اخلاق نظام تعلیم و تربیت۔ نظام معاشرت واخلاق سب کچھ آئے گا اور زندگی کے تمام شعبوں کو قرآن وسنت کے سانچے میں ڈھالا جائیگا جس کے نتیجہ میں انشا اللہ اس ملک میں بھوکا۔ ننگا۔ بے گھر اور بے علم نہیں رہے گا۔

پاکستان کے مختلف صوبوں کے مابین جو معاشی فرق ہے ان کو مٹا دیا جائیگا سارے مسلمان بھائی بھائی ہوجائیں گے فحاشی۔ عریانی کا خاتمہ کر کے اسلام کے نظام حیات کو نافذ کیا جائیگا۔ عورتوں کو وہ حقوق دیئے جائیں گے جو اسلام نے ان کو دیئے ہیں۔ حکومت لوٹ کھسوٹ کی مکمل استیعصال کریگی۔ اور شریعت کے مطابق دولت کمانے کے ذرائع پر کسی کی اجارہ داری قائم نہیں ہونے دیگی۔

مختصر یہ کہ جب اس ملک میں اسلامی نظام آئے گا تو اپنی تمام برکتوں کیساتھ آئے گا۔ خالی تعزیرات ہی نہیں نافذ

سید محمد متین ہاشمی

مصنف کتاب

"اسلامی حدود"

نوٹ ۔ یہ محمد متین ہاشمی صاحب مصنف اسلامی حدود کی خوش فہمی قابل ستائش ہے یہ قانون ۷ ۱۹۸ سے لیکر ۹۹۵ تک تو نافذ نہیں ہوا۔

ع-تا تریاق از عراق آوارده مشود ۔ مارگزیده مرده شود = نذیر اختر

☆ ○ ☆ ○ ☆

جناب پروفیسر منیب الرحمان صاحب - دارالعلوم نعیمیہ

سوال نمبر 1 کا جواب

(الف) جن عناصر کے ہاتھ میں قیام پاکستان کے فوراً بعد ملک کی قیادت آئی ایسا لگتا ہے کہ ان Comittment اسلام کے ساتھ شک و شبہ سے بالاتر نہیں تھی اور یہ نتیجہ ہم کسی کی نیت کے بارے میں شبہات کے نتیجے میں قائم نہیں کر رہے بلکہ ان کا طرز عمل اس کا بین ثبوت ہے۔

(ب) Judiciary- Top Bearucracy اور مملکت و حکومت کے تمام کلیدی عہدوں فائز عناصر انگریزوں کے نظام تعلیم، نظام تربیت اور نظامِ حکومت کے پیدا کردہ تھے لہذا نہ تو اسلام کی حقیقی روح سے آشنا تھے نہ انہیں اسلامی شریعت پر عبور تھا اور نہ ہی ان کا مطمح نظر شریعت اسلامیہ کا نفاذ تھا بلکہ یہ تمام عناصر اپنی بساط کے مطابق اسلام کے عملی نفاذ کے راستے میں رکاوٹیں کھڑی کرتے رہے۔

(ج) علماء اور سادہ لوگ عام عوام الناس کی وابستگی اگرچہ اسلام کے ساتھ غیر مشروط اور ہر قسم کے شک و شبہ سے بالاتر تھی لیکن مملکت و حکومت کی پالیسیوں کی تشکیل آئین، قانون کی تدوین اور ملک و قوم کی تقدیر پر اثرانداز ہونے والے فیصلوں میں ان کی رائے کا کوئی دخل نہیں تھا۔

(د) اس امر کا انکار بھی حقیقت پسندی کے منافی ہوگا کہ مسالک و مکاتب فکر کی بنا پر علماء اور دینی

کو کر

کرنے کا باعث ہے۔

سوال نمبر 2 کا جواب اسلام سے سیاسی قیادت کا عدم اخلاص اور اسلام کو محض ایک پرفریب سلوگن (logan
کے طور پر استعمال کرنا

(ii) حکومت و مملکت کی تمام کلیدی عناصر جنہیں اسلام کے حقیقی نفاذ کی صورت میں اپنے نا
مفادات، عیش و عشرت اور اللے تللے خطرے میں پڑے ہوئے نظر آئے۔

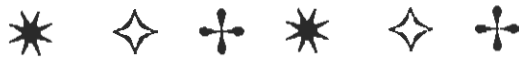
(iii) وہ عناصر جو حلال و حرام کی تمیز کے بغیر دولت کے تمام سرچشموں کو اپنی تحویل میں رَ
چاہتے ہیں اور اسلامی تعلیمات کے مطابق منصفانہ تقسیم دولت کے لئے تیار نہیں ہیں۔

(iv) اسلام نظام عدل کے نفاذ میں سب سے بڑی رکاوٹ وہ پیچیدہ فوجداری اور دیوانی ضوابط
جو انگریزوں سے ہمیں ورثہ میں ملے ہیں اور جو ظلم کو آسان تر اور عدل کو مشکل تر بناد
ہیں۔

(v) وہ ایجنسیز اور ادارے جو قانون کے نفاذ کے لئے اساس اور ریڑھ کی ہڈی کی حیثیت رکھتے
ان سے وابستہ ہر ارکان و عمال کی ننانوے فیصد اکثریت کا رشوت، حرام خوری،
چوری، عیش و عشرت کا دلدادہ ہونا اور عوام کے مفاد کے تحفظ کے بجائے حکمرانوں
مفادات کا ترجمان ہونا۔

سوال نمبر 3 کا جواب بلاشبہ بہت ساری لادینی جماعتیں نفاذِ اسلام کی راہ میں ہمیشہ سے رکاوٹ رہی ہے ان
Marxcism اور Socialism کے علمبردار۔ Secular اور Nationalists
Separationists عناصر شامل ہیں۔ ان عناصر میں آپس میں بہت بڑے تضادات
لیکن "الکفرُ ملتہ واحد" کے مصداق اسلام دشمنی میں یہ سب یکجان ہوجاتے ہیں۔

علمی اور تہذیبی سرمایہ کا تحفظ کیا۔ تفسیرِ حدیث، فقہ اور دیگر علوم دینیہ میں تحقیق و اجتہاد
عمل کو جاری رکھا اور حکومت نے جس حد تک رہنمائی چاہی قوانینِ اسلامی کی تدوین میں ا
کی مدد کی۔ تاخیر کا باعث یہ ہے کہ وسائل اور قوتِ نافذہ علماء اور فقہا کے اختیار میں نہ
ہے۔

سوال نمبر 5 کا جواب پاکستان کے مسلمان اسلام سے وابستگی کے اظہار میں کبھی خاموش نہیں رہے۔ تحریک
نبوت اور تحریک نظامِ مصطفیٰ میں عوام کی قربانیاں، جوش و ولولہ اور ایثار موجودہ تاریخ
روشن مثال ہے لیکن یہ ملک و قوم کی بدقسمتی ہے کہ قیادت نے ہمیشہ دھوکا دیا اور عو
کے اعتماد کو ٹھیس پہنچائی اور کامیابی کی منزل کے قریب پہنچنے پر مقاصد کی تحریک
فراموش کر دیا۔ (1)

✶ ✧ ✢ ✶ ✧ ✢

جناب پروفیسر رفیع عثمانی صاحب دارالعلوم کورنگی سے ملاقات

پاکستان میں قانونِ شریعت ابھی تک کیوں نافذ نہیں ہوا؟

وجہ اس کی بڑی وجہ یہ ہے کہ صرف قوانین بنادینے اور جاری کردینے سے مطلوبہ نتائج کبھی حاصل نہ ہوتے اس کے لئے ہمہ گیر انداز میں کام کرنے کی ضرورت ہوتی ہے خصوصاً مندرجہ ذیل چار نہایت ضروری ہیں جو حدود آرڈیننس کے نفاذ کے ساتھ ساتھ ہونے چاہیے تھے مگر نہ ہوسکا۔

الف جن جرائم کو ان قوانین کے ذریعے روکنا مقصود تھا ان جرائم کے خلاف ذرائع ابلاغ کو استعمال کر کے معاشرے کی پوری فضا کو ان کے خلاف ہموار کرنا۔

ب ان تمام امور کا سد باب کرنا جو ان جرائم کا سبب بن سکتے ہیں۔ مثلاً جرمِ زنا پر سو کوڑے یا سنگسار کی سزا مقرر کرینکے ساتھ ساتھ یہ ضروری تھا کہ زنا کے اسباب کی روک تھام کی جاتی۔ مثلاً نکاح کی راہ میں جو معاشرتی رکاوٹیں غلط رسموں کی وجہ سے پیدا ہو گئی ہیں انہیں ختم کرنیکے لئے تمام قومی وسائل استعمال کیا جائے۔

مردوزن کے مخلوط اجتماعات، بے حیائی، فحاشی اور عریانی کو ختم کرنے کے لئے ہمہ گیر انداز میں جدوجہد کی جائے۔

پ موجودہ قوانین کو جو ان نئے قوانین کے مقاصد حاصل کرنے میں رکاوٹ بن سکتے تھے ان میں ترمیم کی جائے۔ مثلاً ایک بیوی کی موجودگی میں دوسری عورت سے نکاح کرنے میں فیملی لاء آرڈیننس کی بعض دفعات رکاوٹ پیدا کرتے ہیں جن میں ترمیم کرکے یہ رکاوٹیں حتی الامکان کم کردینی چاہیے تھیں تاکہ کوئی شخص اگر نکاح ثانی کا ضرورت مند ہو اور دونوں بیویوں کے درمیان انصاف کرنے کی توقع رکھتا ہو تو وہ آسانی سے دوسرا نکاح کرسکتا ہے۔ اسی طرح مثلاً فیملی لاء آرڈیننس میں تین طلاقوں

رو.

تین طلاقوں کے بعد رجوع ممکن نہیں۔ چنانچہ ایسی جن عورتوں نے تین طلاقوں کے بعد شریعہ ضابطے کے تحت نکاح ثانی کیا وہ فیملی آرڈیننس کی رو سے درست نہ ہوا۔ حالانکہ وہ نکاح جائز تھا اور شوہر کے ساتھ جنسی تعلقات کو فیملی لاء آرڈیننس کی اس دفعہ کی وجہ سے زنا قرار دے دیا گیا۔ چنہ ایسی بہت سے عورتیں فیملی لاء آرڈیننس اسی غلط دفعہ کی وجہ سے زنا آرڈیننس کے تحت مجرم ؛ دے دی گئیں۔

ت

قانون کو صحیح طور پر نافذ کرنے کے لئے جو سب سے ضروری چیز ہے وہ یہ ہے کہ اس قانون کو : کرنے والی مشنری دیانت دار ہو۔ اس قانون کی عظمت دل میں رکھتی ہو۔ مثلاً پولیس، عدا کارندے وغیرہ نیز اس قانون کی تشریح اور تعبیر کرنے والے جج صاحبان اس کی کماحقہ استطاعہ رکھتے ہوں۔

حدود آرڈیننس کے سلسلے میں یہ تمام ضروری امور مفقود ہیں جس کی وجہ سے یہ قوانین اپنا عملی ظاہر نہ کرسکے۔

حکومت پاکستان نے ان جزوی قوانین کو شریعت کے مطابق مدوّن کیا لیکن حکومت کی مشینری ۔ اسے ناکام بنادیا۔

دینی سیاسی جماعت اور Secular سیاسی جماعتوں نے اس میں داخل ہونے میں کوئی تعاون نہید کیا بلکہ بلواسطہ اور بلاواسطہ ان قوانین کی راہ میں رکاوٹیں بنتی رہیں۔

علمائے دین، ملک کے نامور علماء، فقہا .... نے تعاون فراہم کیا لیکن بے سود۔

میں سمجھتا ہوں کہ عوام قصور وار نہیں ہے ان کو سیاسی لیڈروں نے گمراہ کیا اور ہماری بیورو کریہ Bearucracy نے ایک مجموعی عملی پالیسی جاری رکھی اس نے عوام کو اس قابل ہی نہیں چھوڑا عوام اس میں اہم کردار ادا کرسکتے۔ (1)

Chapter - 5

COMMENTS

On
The Causes of Non-Implementation of Shariah

In

Pakistan

GOVERNMENT OF PAKISTAN :

Since the birth of Pakistan as a Muslim ——— State it is surrounded by the Bureaucrats and the Government is being run by them without allowing anyone else to hold the reigns of government.

Elections come and elections go but winners were always bureaucrats. One party of bureaucrats loses the election and the other party of bureaucrats wins it. Faces are changed but bureaucratic policies for running the government remain the same. Bureaucrat begets bureaucrat.

The reality is that they have been brought up on a most modern envirements and their mental developments were developed within the same modern atmosphere. Their thinking developed within the frame work of modern society. Their faith in the ———religion as a muslim is most modern.

The islamic law with its limitations and rigidity as prescribed in the Holy Book and Sunnah is not acceptable to them because it does not allow them to move freely in a modern society.

With this back ground of bureaucrats who are holding the reigns of Government, how would it be possible for them to bring Islamic Law in Pakistan. If under the public pressure they are forced upon to do so, they will avoid it as it is being done sofar. They being ignorant of divine Law will always prefer to implement man made law, which is unislamic.

To avoid the implementation of shariah law in an islamic state means to refuse the commandments of Almighty. He is called disbeliever and will invite punishment from God.

ANNEXURE

Please See

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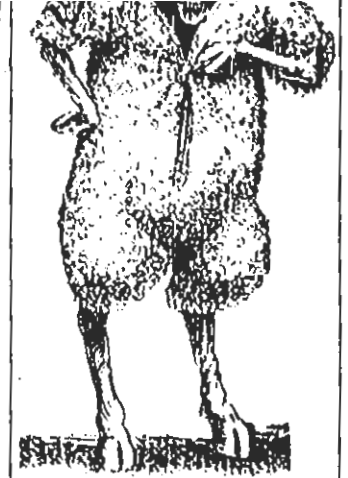
DO WE HAVE DEMOCRACY ?

From Lt.Col.(Retd.) S. Chaudhry

Since the inception of Pakistan, the ruling class- MNAs, MPAs, Senators- has been from a few families, tribes or clans like Qureshis, Jamalis, Mazaris, Legharis, Maliks, Khans, Shahs, Bhuttos, Gilanis, Jatois, Khars, Arbabs, Tiwanas, Saifullahs, Wattoos, Nawabzadas, and other jagirdars and waderas. They have done nothing for this country except loot and plunder its wealth with both hands. All along they have been fooling the innocent masses in the general elections.

The irony of fate is that each family gets divided, half favouring the opposition and other siding with the government. Thus they double ensure that their family stays in power. They also get inducted their near and dear ones in CSP cadre so that the bureaucracy remains under the control.

It is high time that we, the trodden masses, rise to the occasion and make-up our minds to show no confidence in them and totally reject them so that people from the middle class get a chance to become MNAs, MPAs and Senators who can run the government smoothly and also work for the uplift of the country and the masses. This idea might look strange but one should realise that sooner or later we have to change this system to bring true and realistic democracy to the country.

enough to refuse and delay the implementation of shariah law in a muslim state and will make him incapable to develop in him the pious feelings for the sancitity of Islam and Din-e-Islam. This is the main cause of delay in enforcement of Shariah Law in Pakistan State.

Who-so-ever be the ruler of this country will accordingly prefer to ru n the country under man-made law, because it suits him as this law is flexible and can be changed according to his wishes and of his cabinet wishes. The man-made Law can be amended and changed with the change of the head of state if he so desires.

On the other hand Shariah Law is a Divine Law is not at all amendable and the nation (of the Muslim State) has to follow it strictly. Anything repugnant to the tenents of Islam and commandments mentioned in the Holy Quran and Sunnah is void. Ijma and Ijtehad could be applied whenever there is difference of opinion in the application of Islamic Law with the unanimous consent of the Mujtahedeen provided it does not differ from the original tenents of Islam as prescribed in the Holy Quran.

The fact remains that the implementation of Divine Law in Pakistan seems to be impossible because no head of the state is prepared to run the Government under Shariah Law due to lack of interest for its enforcement.

2). **POLITICAL PARTIES :**

By my moving in the circle of Political Parties for research work, I found that they are purely political people. Their aim is to fight for their interest to achieve their goal for securing maximum votes for them in the general election and to become the leader of the house.

They have their own strategy and plans to run the government under man-made law. I have never heard a leader or a political party's member discussing islamic form of government to be their objective for forming a government under Shariah Law.

establish peace and prosperity in the country. They will also provide food, shelter and clothirgs. But I have never heard them saying to establish Islamic Government under Shariah Law. The Law which is essential and unavoidable for an Islamic State. Any defiance and denial will render them sinners and shall be called "KAFEROONS" (disblievers of God) as stated in our Holy Book.

The Pakistan Muslim League (N) and Pakistan People Party are the main Political Parties in Pakistan who are supposed to take over the Government after their success in the General Election.

Sofar as my observation goes both of them are not interested to form an Islamic Government. Pakistan People Party is deadly against the enforcement of Shariah Law in Pakistan. To evidence this negative attitide of Peoples Party for introducing Shariah Law in the Country, I refer to their statements made in the News Paper (DAWN) dated 3rd July, 1987, and again 3rd July, 1988.

The other main party is Pakistan Muslim League (N) though did not talk against islamic form of government but it also did not specifically make any sincere effort to bring the country under Shariah Law during their rule.

Similarly all other political parties big or small showed their least interest to patronise Shariah Law as the Law of Islamic Republic of Pakistan.

3). **RELIGIOUS HEADS - MUFTIS.**

There are at least a dozen of religious parties formed in Pakistan. Every party has its own school of thought to justify its true faith in Islam and their faith in one God and His Rasool (PBUH). They have full faith in Holy Quran and Sunnah (The precepts and practice of our Holy Phophet (PBUH) they preach Islam according to their own school of thought for reaching the same goal of salvation where every muslim has to arrive at, that is to say belief in one God and his prophets and the last

accordance with their school of thought which led the parties to form a separate religious group for themselves. The majority of the head of the Religious Parties are educated and tutored privately by Ulema-e-Din at the residence of Ulemas or Masjid. They have no degrees from recognised university in Islamic Studies and other subjects in Din-e-Islam.

According to the research work carried out by me, I am of the opinion that these parties are in fact the Political Parties in the garb of religion. They exert more for political gains rather than to promote Din-e-Islam. None of them is keen to preach Islam and bring Shariah Law in the country.

In the name of Islam they make speaches for the purpose of creating interest amongst the People and to make them to join their party for political motives.

Ultimately these members are used for casting votes in their favour at the time general elections held in the country.

While assessing this farsighted planning of the religious parties, I am unable to quote a single instance about their intentions as to who is purely working for Islam and exert for the implementation of Shariah Law in Pakistan.

The group of people who follow them, have blind faith in their leaders-for example, If the leader is against the implementation of Shariah Law, All members are also against it and if he favours the implementation of Shariah Law in Pakistan, They also vehmently favour its implementation.

No member of the party can raise any objection on any activity of the party, if there is any difference in members views against party, the party will reject him as a member and he has to resign from the party.

and joined the other.

In order to authenticate the refusal of certain religious parties for the implementation of Shariah Law in Pakistan I quote hereunder negative statements made by them against the enforcement of Divine Law in Pakistan in the local news papers such as :-

1) AMIR-JUMAAT-E-ISLAMI ON 23/7/91 (DAWN)

2) NAIB AMIR JUMAAT-E-ISLAMI ON 8-7-91 (DAWN)

3) JAMAAT-E-AHLE-HADITH ON 20-04-89 (DAWN)

4) JAMAAT ULEMA-E-ISLAM ON 17-06-88 & 06-08-88 (DAWN)

5) THERIK NIFIZ FIQH-E-JAFRIA ON 09-12-90 (DAWN)

NOTE :-

Chapter No. 2 of my thesis will give you the detail of their statements against implementation of Shariah Law in Pakistan.

4) ULEMA AND INTELLECTUALS :

In continuation of my research work, I have the privilege and honour to meet the religious scholars and to listen their views for non implementation of Shariah Law in Pakistan.

I ventured to ask them as to what could be the causes of delay with the Government of Pakistan for its enforcement.

It was pleasant to discuss this subject with them. They expressed their views supporting their arguments in favour of immediate implementation of Shariah Law by quoting Ayat-Mubarka from Holy Quran to authenticate their views. They said that a muslim state when it declares to be a Islamic State is duty bound to enforce Shariah Law in the said state. Any delay or refusal in its enforcement will render the head of state and his Governing Body Liable to punishment by almighty God as mentioned in Holy

Government appears to be dis-interested and she disregarded their able suggestions but in stead created some hinderances to discourage its implementation in Pakistan.

Few ordinances have been introduced by the Government but have not sofar been fully applied but instead the English Law is prevelent in the Honourable Courts of Pakistan, and these newly enacted ordinances are seldom used.

According to Ulema-e-Din (Religions Scholars) they say they are not in majority in the National Assembly of Pakistan which does not enable them to force their views in National Assembly sessions and to press their point of view for the immediate implementation of Shariah Law.

The Late General Zia-ul-Haq, the Ex-President of Pakistan was the person who was keen enough to bring Islamic Law in Pakistan. But after his death, this matter was thrown into cold storage for ever.

A council was formed in the name of "Council of Islamic Ideology by the Government of Pakistan for the preparation of report for enforcement of Shariah Law with the help of Experts and Scholars and experienced jurists of country. The Body of the Council was comprised of selected (Religious) Scholars, Jurists and Experts who by their sincere efforts prepared and submitted a detailed report on this subject and suggested the Government the suitable guide lines for implementation of Islamic Law in Pakistan.

It is now (since 31.05.81) 17½ Years have elapsed but no action has been taken on this report. This clearly shows the intention of Govt of Pakistan.

Similar is the case with the people who join the religious parties as a member. They are a step forward than those who are member of the political parties. Here in these parties the members are called disciples who are most obedient servants of the head of the religious party. The religious head when delivers some speech or address them he sits on a higher place and all the followers (Disciples) sit on the ground with folded hands and necks bowed down to pay full respect to their exalted religious head.

Whatever the leader uttered in his speech is taken by them as a true & correct & last verdict in this world. This is their faith in him.

(C) **INDEPENDENT GROUP OF PEOPLE :**

This class of people whether educated or not are politically conscious people. Their aim of life is to exert themselves to achieve a goal in political life. They work hard to get a seat in the National Assembly or Provincial Assembly and after their success in General Election, they will join the party who won the Election by securing majority of votes.

These independent candiadates are least interested whether the government is run under Islamic Law or Man-made Law. They are interested only in the stability of their own seat.

The fact remains that none out of them was keen enough to propogate for introduction of Islamic Law in the country. Normaly they go alongwith the proposals and plans of the ruling party as "YES" men.

Unexpectedly if some one out of them raises his voice in favour of any matter suitable for the country or ask for implementation of Shariah Law in Pakistan in the Assembly and if it is unsuitable to party's own interest it is suppressed by the loud voice of majority. The party who formed the government have sofar never encouraged Shariah Law to be implemented in Pakistan but always stood against it.

Under the Quranic Injunctions the Shariah Law can be forced upon the people of a Islamic State and the state is constrained to implement the same. Any delibrate refusal or delaying tactics used will be considered as refusal to follow the commandments of God. They will therefore invite the wrath of God and become sinful and will be called disbelievers.

AYAT :

"If any fails to judge and command by (the light of) what Allah has revealed are commiters of sever wrong" (1)

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(1) QURAN AL=MAIDA (5:45)

According to the scholars & intellectuals, the cause of delay in implementation is due to the advertant and delibrate cold behaviour of the Government to encourage implementation of Shariah Law in Pakistan. It is the Government of Bureaucrats since the birth of Pakistan, who are against the promlugation of Islamic Law in Pakistan.

5) **PUBLIC OPINION :**

Meeting the people in general, I formed the opinion which seems to me not incorrect according to the views expressed by these people.

I place them in the following three catagories :

a) The group of people linked with political parties.

b) The Group of People linked with religious cum political parties.

c) The group of people with independent views having no link what so ever with the above two parties.

(A) **PEOPLE WITH POLITICAL PARTIES :**

People out of the general public who are linked with political parties repose full confidence in the said political party and they have blind faith in the party and always act upon the advice and instructions given to them by the party. e.g. If they are asked to go on strike and shout slogans against any act of Govt they will in the form of huge mob shout slogans in the streets against such acts and if the same political party by passage of some time ask his people to utter slogans in favour of such act they will happily follow the directions of the party.

They are innocent people and undue advantage of their innocense is taken by the party leaders, by using them for their selfish motives. These poeple have no opinion of their own. They are entirely dependent up the views of

SUGGESTIONS FROM PARTIES INTERVIEWED

INTERVIEWED ON 05/06/91

Soon after Partition when Pakistan was declared as an Independent state, the Government high officials, the Muslim, were transfered on request or other-wise from Govt. of India to Pakistan.
These high ups worked through out their career with English administration before partition and mixed up with them in their way of life. To adopt english way of life, by our Officers, was a matter of pride for them and to lead this way of life was a matter of honour and prestige for them.

Majority of our Muslim high Officers adopted it and set them-selves free from the obligations of their own religion and faith in Islam. To be a religious man and a member of that Modern Society at the same time was never admired by that life of Society.

Hence our Muslim Officers who were transfered from Govt. of India to Govt. of Pakistan on higher posts never bothered about their faith in Islam & their religion. They never showed any interest in "Saum-o-Salat" but always boldly ignored it.

When the question of implementation of shariah law in Pakistan came up, these bureaucrats if not directly, they indirectly opposed it. They created hinderances in its enfercement as a Law of the land. This is being opposed by them or their predecessors up till now.

He further-argued that shariah law remained inactive so far and will remain inactive in Pakistan. On the other hand the rulling party who-so-ever elected to run the Govt. never made any effort to enforce Divine law in Pakistan.

When under the constitution law, the Pakistan was declared as Islamic Republic State, it becomes obligatory to run the Govt. under shariah law otherwise it tantamounts to refusal to accept God Given law as prescribed in the Holy book of Quran.
He said, that according to the bureaucrats, some of the political parties believe in leading modern way of life and declare that Islamic law is an old and inpracticable law in this new world of Modern age. They say this shariah law requires a lot of amendments before it is implemented in Pakistan.

MR. MOHAMMAD YASIN- A RELIGIONS SCHOLAR

INTERVIEW ON 4-10-1990

The initial spade work for the enforcement of shariah law in Pakistan is not an easy job but the unreasonable delay of the Govt. of Pakistan for its promulgation is also without cogent reasoning. I am sorry to say that the council of Islamic ideology and Islamic research Institute did nothing positive so far.

Similarly the political parties and Religious cum political parties played no positive role for the enforcement of Divine Law in this Islamic State.

The Religious and political parties delivered speaches after speaches in public to bring Nizam-e-Mustafa and Nizam-e-Shariah but did nothing so far in 45 years. The Nation is anxiously waiting for its promulgation upto today and now they are almost disappointed for their false promises.

Secondly I venture to ask the elected bodies who are in power what they have given to the Nation against their promises, since the birth of Pakistan.

It is quite evident that parties in power advertantly did not encourage its implementation because their personal interests and personal gains will be adversely effected. They have no interest in the National build up against their personal motives which they have to achieve within the period of their stay.

None of the elected bodies is inclined to implement the Law of Islam which appears to be out of question and out of date for them as they say it.

The poor class and Middle Class of Pakistan cannot participate in general Election of the country, whether it is held after 5 years or before. It is a costly affair. It is a game of wealthy people such as land-lords, wealthy business magnets and bureaucrats of the country. They could afford to contest.

The middle or poor class can never manage so much wealth to contest election. Their intelligence, honesty, hard work, love for country carries no value without money. They are condemned people for such activities.

Since the birth of Pakistan, the Elections were contested only by rich people who had enough money to spare and play this game. The other part of Nation who do have intelligentia, honesty & hard working nature. were deprived of the right to serve their country as elected members. If we ask the elected bodies who run the Govt. what developments have they made so far, for uplifting the country? the answer is in negative. This is written on wall and well known fact that nothing concrete in the developments has come out so far in uplifting the Nation and the country.

Feudalism and Bureaucracy are prevailing in our country in the name of Islamic Democracy.

The Elected bodies in whose hands reigns of country were given never encouraged shariah law for its enforcement in Pakistan. The man made law cum english law is not the law for Islamic Republic of Pakistan. The Divine law is the law for this land to be implemented.

The shariah Bill was presented not once but many times in the parliament but was never passed.

These feudal lords and wealthy people who are members of elected body if pass the Shariah Bill in the parliament they have to be Deprived of their extra lands & Excess wealth they possess, because Divine law prohibits with-holding of Extra wealth. How could therefore they think of introducing shariah law in Pakistan.

school of thought and they are more than half a dozen in number in the country having their own factions & school of thought. They are also against the shariah law to be implemented in Pakistan. They have certain objections against the shariah bill, because it does not suit their faction and it does not came up with their school of thought hence they dis-agreed with it.

The parties are:

(i) Jamaat-e-Islami
(ii) Noorani Group
(iii) Maulana Fazulur Rehman Group
(iv) Shia Group (Fiqa-e-Jafaria)
(v) Ahl-e-Hadith
(vi) Sipha Sahaba Group

They are at daggers drawn with each other and they are against those who disagree with their school of thought whether it is Govt. or any body else.

Keeping in view these circumstances prevailing in Pakistan it is impossible to implement shariah law in Pakistan.

Forty five years have passed and there is no sign of shariah law in Pakistan. In addition to that the judicial courts & legal practitioners do not take any interest in bringing shariah law in the country. If the judges & law-yers compel the Govt. to bring Divine law in the country there could be a possibility of its enforcement.

Now remains the public opinion, the majority of the public are members of a political or a religious groups, whatever their leader says they will accept it wether it is against religion of Islam or in favour of it. They follow their leaders blindly.

INTERVIEWED ON 11/01/92

The English Rule has now come to an end here, but English rulers left their habbits, customs for our Govt. officers to copy, particularly those officers who were working under them.

After partition at the advent of Pakistan, these officers adopted & copied all the habbits, modes & methods of English rule to run Pakistan Govt. on this footings.

The Bureaucracy is still in full swing in our country and we find no change in the attitude and behaviour of our Bureaucrats as compared to English.

Though shariah law implementation is there in our constitution but, Pakistan Bureaucrats are not at all willing to accept it for Pakistan because of their Modern thinking and living which has kept them far away from their religion and belief. According to them shariah law does not fit in our present life. It is an old law & requires modification to fit in this modern life of our country.

The second cause of its non implementation could be attributed to the fact that shariah law is not taught in our educational institutions and does not exist in the Universities sylabus. Hence no degree in this law is available or conferred upon the students.

The English law no doubt is taught and degrees are given to the students who pass it and is acceptable in the market for legal practice. Accordingly our Honourable courts accept it for legal practice and employment.

To make fool of the Nation the Govt. introduced half a dozen Acts in the name of Islamic law and enforcred it to console the people. But the Acts have not so far been applied properly by Honourable courts for decision making, English law is frequently used for civil and criminals cases we have seldom heard & read that criminals are awarded punishments according to the Islamic law introduced.

papers and is not stopped & rooted out, the shariah law will never be implemented in Pakistan.

Similarly the political parties of Pakistan are also not interested in the implementation of shariah law because majority of them believe in secularism.

Religious parties do show their interest in the implementation of Divine law in Pakistan, but their school of thought should prevail first and no other school of thought of any other party is tolerable and acceptable to them. Every such party wants that all others should bow down to this party's school of thought, and faction.

This antagonistic attitude of each religious party leader has delayed the enforcement of shariah law in Pakistan. They neither do anything good for the country Nor let others do good for pakistan.

PROF. MR. RAFI USMANI- DARUL ALOOM- KORANGI, KARACHI.

INTERVIEW ON 31-07-94

For the implementation shariah Law, the Pakistan Govt. Machinery should be honest and must have the respect for shariah Law.

The Jurists and legal practitioners must be equipped with thorough knowledge of Islamic Law for its application and interpretation.

The Pakistan Govt. enforced certain Islamic laws but all remained inactive so far. In stead English Law-the man made law-is being applied in every case and the Law required to be enforced was ignored.

The political parties, religiouscum political parties, though declared their interest for shariah Law implementation in Pakistan but never helped the Govt. for its promulgation in the country.

He said the religious Scholars, intellectuals of the country remained dis-interested and never compelled or suggested the Govt. to introduce Islamic Law in Pakistan.

All these factors mentioned here above show that none of the leaders representing the Nation showed any inclination or interest for the implementation of Divine Law in this country being a Islamic Republic State. It is painful to ignore the promulgation of Divine Law in this Muslim State.

His views are that Govt. of Pakistan is comprised of legislature, Executive and Judiciary. These three administrative bodies were handed over to us by the British Govt. at the time of Partition. We continued the same type of administration. We made no change in this method of administration.

On one hand in a islamic State such western ways of administration basically are contrary to administration of shariah law. On the other hand the political and religious cum political parties are not playing their role justifiably for the Islamic republic of Pakistan. They wish to have secularism in Pakistan. Until & unless, secularism is not condemned once for all from Pakistan the God given law can not be implemented.

The Religious scholars, intellectuals, & legal experts in spite of their honest efforts for promulgation of shariah law in Pakistan could not get through in their objectives because as they say, they are not in majority in parliament to press this demand.

Our Nation which is not educated are the members of some political or religious parties. They entirely depend upon their leaders and have no independent views. They act according to the actings of their leaders and blindly follow them. These respectable leaders are also very much disinterested in the implementation of shariah law in Pakistan. This clearly shows that the public with them is also against its implementation. It is therefore quite evident that these leaders political or religious are responsible for the non implementation of shariah law in Pakistan.

MUFTI WAQARUDDIN- MEMBER OF THE COUNCIL OF ISLAMIC IDEOLOGY

INTERVIEWED ON 02/12/90

Since the Birth of Pakistan to this day, the high ups of Govt. of Pakistan and the Head of the State never encouraged the implementation shariah law in Pakistan.

By use of their clever planning they threw the shariah Bill introduced in 1989 into a cold storage and always avoided this issue of its enforcement in Pakistan.

According to Mufti Sahib, they never refused openly its implementation but also never encouraged its promulgation.

During the period of 45 Years of Pakistan existance, objective resolution of Pakistan was discussed in Pakistan National Assembly and shariah Bill 1989 also came into discussion in the Parliament but produced no positive results.

He said, if the Govt. shows its willingness of its implementation, there developes a definite hope of its enforcement otherwise it remains un-Islamic country as it is now.

Late Zulfikar Ali Bhuto Sahib, the then Prime Minister gave the hope of shariah law implementation but did nothing like other ruling parties and later on he turned against it. He was advised by his well wishers to bring Islamic Socialism, in Pakistan which he tried but miserably failed as the Nation did not accept this solgan of Mr. Zulfikar Ali Bhuto.

INTERVIEWED ON 16/1./90

After the advent of Pakistan, the reigns of Govt remained upto this day in the hands of such elected parties who were Neither interested in the implementation of shariah Law nor they were keen to run the Govt. on these footings. They remained against it through out.

The Islamic way of life was ———— not acceptable to them. Their version was that this religion and the state are two different things. In the state affairs your religion has no place and two things should remain aloof.

They had the liking for western way of life and its Law being Modern Law was acceptable to them. Because pope has a different role to play and Govt. has different role to play.

M. Haqani expressed his views that:-

i) The First 8 years of Pakistan were spent in the making of constitutional law, rehabilitation of refugees and to establish Law & order in the country.

ii) Soon after this, the Marshal Law was imposed in the country which remained for 13 years. (21 Years were wasted in these things).

iii) Moreover from 1947 to 1986, the Bureaucrats & feudal lords who were and are still busy in looting Pakistan are deadly against the implementation of Shariah Law in Pakistan. They will never favour its implementation because the freedom in their un-Islamic way of life in looting Pakistan will come to an end and their aims of life will die once for all. He said they have more faith in wealth collection than to have faith in God and his Divine Law.

Chapter - 7

CONCLUSION

ESTABLISHMENT OF THE ISLAMIC STATE :

The collective effort of the Millat for the moral perfection and happiness of the individual cannot however gain its ends truely and comprehensively unless it transforms itself into a free theodemocratic state, whose function should be to enforce the Islamic way of life in its totality and to act as a condition for the natural flowering of the ideal of Islam. Hence the establishment of Islamic State whenever and wherever possible, forms according to the Holy Quran, the duty of Milllat not only towards Islam but also towards the individual.

That is is an unavoidable duty, in case of ability, is borne out by the fact that the Holy Prophet (PBUH) established the state at Madina at the very first opportunity.

Further this duty is contained and emphasised in the following verse :

"He it is who hath sent His Messenger with the Guidance and the Religion of Truth, that He may cause it to prevail over all religions however much the idolaters may be averse. (IX:33)

It should be noted that the domination of Islam as a way of life is not possible without the establishment of the Islamic state. Hence it is collective duty of Muslims to strive for it with might and main.

Under the injunctions hereabove quoted, it is an obligation to establish the Islamic State because without that it is impossible to carry it out truly and comprehensively.

The consititution of the Islamic State:
(Next Page)

i. Sovereignty - "Sovereignty belongs to God"

ii. The right to legistate.

iii. Status of Governmental Authority.

iv. Objective of the Islamic State.

v. Democretic rights of the people.

vi. Qualifications - Status of the Head of Islamic State (Amir-ul-Mominin).

vii. Separation of Executive and Judiciary.

viii. Qualification of States Functionaries.

ix. Obedience in people's own interest.

These principles are explained hereunder duely supported by the Quranic verses :-

1. <u>Sovereignty belongs to God.</u>

a) "Authority and control belong to Allah only. He hath commanded that ye serve none save Him: that is the right religion, but most human beings understand not." (1)

b) "To Him belongeth the kingdom of the heavens and the earth." (2)

c) He does not share His command with any person whatsoever. (3)

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(1) QURAN-YOUSUF (12:40)
(2) QURAN-AL-ZUKHRUF (43-85)
(3) QURAN-AL-KAHF (18:26)

2. **The right to Legislate.**

The right to ligislate belongs basically to God. In the Holy Quran we read :

a) "Indeed! We (God) have revealed unto thee (O,Mohammad) the scripture with truth, that thou mayest judge between mankind by that (law) which Allah hath shown (i.e. hath revealed unto) thee. (1)

b) We (God) sent aforetime our Messengers with clear signs and sent down with them the book and balance, that human beings may conduct themselves with equity. (2) .

These verses affirm direct Divine legislation.

However, the laws given by our Holy Prophet (PBUH) in addition to Quranic Laws, also fall under the category of what "Allah hath revealed."

Nor does he (i.e. Muhammad) say (aught) of (his own) desire. It is not less than inspiration sent down to him." (3) .

Hence: it has been commanded "And whatever the Messenger (Muhammad) gives you, accept it, and from whatever he forbids you keep back." (4) .

Having been given the Divine Law it is not permitted to the Muslims to adopt, when they have their own state, any law which is repugnant to it. The following verses emphasise this fact very vehemently :

a) "If any do fail to judge and command by (the light of) what Allah hath revealed, they are unbelievers (5) .

b) If any do fail to judge and command by (the light of) what Allah hath revealed, they are the transgressors." (6)

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(1) QURAN AN-NISA (4:105)
(2) QURAN AL-HADEED (57:25)
(3) QURAN AN-NAJM (53:3-4)
(4) QURAN AL-HASHR (59:7)

It should be noted that the Holy Quran prohibits only the violation of "what Allah hath revealed." But it does not lay down, either in the verses just quoted or anywhere else, that Muslims are forbidden from following any laws which Allah has not revealed, thus leaving it open to frame new laws for meeting the exgencies of new situations. Ofcourse all such laws should be in conformity with the Divine guidence as the Holy Book says.

"Do they seek then the judgment of paganism? And who is better in judgement than Allah unto a people whose faith is assured?"

Thus a controlled and limited but positive, freedom has been given to the Muslim in respect of legislation.

3. **Status of Governmental Authority.**

Human beings are vicegerents of God. Hence governmental authority can be held by them as a delegated function and as a trust under the Sovereignty of God.

a) Behold, thy Lord said to the angels; "verily I am going to place a vicegerent on the earth." (1)

4. **Objectives of the Islamic State.**

The objectives of the Islamic State are :-

a) To maintain internal order and ward off external aggression. In respect of maintenance of internal order, the Holy Quran says :

"And if Allah had not repelled some men by other, the earth would have been filled with mischief. But Allah is Lord of Kindness to (His) creatures."(2)

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(1) QURAN AL-BAQARAH (2:30)

(2) QURAN AL-BAQARAH (2:251)

remarks, "This verse emphasises the importance of the state and establishes the fact that, but for the existence of organised government, human society would have been destroyed. On truth is based the Maxim, that Religion and State are twins. .

b) As regards warding off external aggression, we are told: "To those against whom war is made, permission is given (to fight) because they are wronged: and verily Allah is most powerful for their aid. (1) .

i) "Allah doth command you to render back your Trusts to those to whom they are due; and when ye judge between man & man (whether Muslims or non-muslims) that ye judge with justice: Lo! comely is the teaching which He giveth you! Lo! Allah is He who hearth and seeth all things."(2)

ii) 'Oh ye who believe! stand out firmly for justice, as withnesses to Allah, even as agianst yourselves or your parents, or your kin, and whether it be (against) rich or poor: for Allah can best protect both. Follow not the lusts of your hearts, lest ye swerve and if ye distort (justice) or decline to do justice, verily Allah is well-acuqnited with all that ye do." (3) .

c) To do all that lies in its power and to employ all means and media including "Tableegh" for the establishment of "all that is right (al-ma-ruf) and elimination of" all that is wrong (al-Munkar).

d) To, organise institutions for spiritual and social welfare.

"In most of their secret conferences there is no good, but if one commandeth a deed of economics well-doing or justice or ISLAM (i.e. establishment of peace, happiness or order) among human beings, to him who does this, seeking the good pleasure of Allah, we shall soon give a reward of the highest value.(4) .

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(1) QURAN AL-HAJ (22;39)
(2) QURAN AL-INAM (6:59)
(3) QURAN AN-NISA (4:135)
(4) QURAN AN-NISA (4:114)

Moreover from the social and economic point of view, the function of Islamic State is to transform the Muslim community into a community of middleroaders of the middle class standard with the elimination of the evils of poverty, on the one hand and the evils of riches on the other, as the Holy Quran proclaims:

"Thus we have appointed you (O.Muslims) a middle nation (or a nation conforming to the just mean) that ye may be witnesses against mankind and that the Messenger (Muhammad) may be inregard to you a witness.[1]

e) To actively endeavour for making islam the supreme ideological force on the world front.

i) "It is He Who has sent His Messenger with Guidence and the religion of Truth, that he may proclaim it (as the supreme ideological force) over all religions (namely over all systems of belief and action) even the pagans may detest (it)."[2]

ii) "Against them (i.e. your enemies) make ready your power to the utmost."[3]

5. **Democratic rights of the people.**

People are to be free and in possession of democratic rights;

People in Islamic state are to be free from the subjection to any human being, because their government is the government of law and they are subjected to God alone.

We have been told:-

"The authority and control belong to Allah only. He hath commanded that ye serve none save Him. That is the right religion but most human beings understand not."[4]

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(1) QURAN AL-BAWARAH (2:143)
(2) QURAN AL-SAFF (61:9)
(3) QURAN AL-ANFAL (8:60)

The Holy Quran lays down the following principle in respect of the collective life of Muslims:

"Conduct their affairs (or government) by mutual consultation[1]

It is evident that the administration of the state on the basis of mutual consultation is impossible and unthinkable without the citizens enjoying freedom and full democratic rights.

Moreover it is the essential condition and consequence of the establishment of the absolute justice enjoined vehemently by the Holy Quran that the people should be in possession of freedom and equality of apportunity, in other words full democratic rights and this actually has been realised in the Islamic State.

6. **Qualification status and function of the Head of the Islamic State. (Amir-ul-Mominin)**

i. He must be a Muslim endowed with a high standard of piety, knowledge, wisdom and physical qualities, including bravery.

"O,ye who believe! obey Allah and obey the Messenger and those who wield authority from amongst you."[2]

Even from the purely rational point of view the head of an ideological state can reasonably be only he who believe in and represents that ideology.

As regards the high standard of piety, the Holy Quran lays down the law:-

"Verily the most honoured of you with Allah is (he who is) is the most pious of you."[3]

ii) His status is that of (a) the vicegerent of God, (b) the successor to the Holy Prophet (PBUH) (c) the Representative of the people who delegate their authority to him.

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(1) QURAN AL-SHOORA (42:38)
(2) QURAN AN-NISA (4:59)

a) He is the vicegerent of God as it has been said about David (peace be on him)

'O David we did indeed make thee a vicegerent on earth.[1]

b) He is the successor to the Holy Prophet (PBUH). The Holy prophet being the founder and first head of the Islamic state, every other head of Islamic state who comes after him is naturally his successor. (This is Historical Status).

c) He is the representative of the people, who as vicegerents of God delegate their authority out of orgnistional and administrative necessity to him.

The administration of the Islamic State being based on "mutual consultation" no one can impose himself as a despotic ruler on the Muslims. Rather he is to be elected by them and as such he is to be their representative. (This is political status)

iii. His functions are :-

As a vicegerent, his natural function is to live for God, to carry out Divine commands & to surrender his ego completely to Divine pleasure.

As successor to the Holy Prophet (PBUH) his natural function is to imitate the Holy Prophet as a Muslim and as head of the state as best as he can.

As representative of the people, his natural function is to be the servant of the people and not their master.

Hence he should lead a life of austerity and self negation. It has been said about good Muslim that they sacrifice their own interest and comforts for the sake of other Muslims. The head of the state is therefore duty bound, more than anyother Muslim to base his life on slef-sacrifice.

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(1) QURAN "SAD" 38:26

Thus his life must be exemplary for the people in respect of the Islamic way of life.

d) His relationship with people :-

i. **Parliament**

He should rule the state in consultation with the people. Thus there should be a parliament.

According to the Holy Curan, the Holy Prophet (PBUH) was commanded by God, inspite of his unique position as God's Messenger, to administer the state in consultation with the people, who were his followers.

The command reads :-

"Thus, as a successor to the Holy Prophet (PBUH) the head of the Islamic State cannot assume the position of an autocrat or a dictator and cannot disturb the democratic rights of people.

ii. **People's rights to differ:**

The citizens of Islamic State have the right to differ with the head of state and when such a situation arises, the dispute is to be referred to the Holy Quran and the Prophetic Guidence (Sunnah) for arbitration.

The right to differ is directly contained in the right to give opinion, while the principle for settlement of differences has been given in the following verses:-

"If ye differ in anything among yourselves, refer to Allah and His Messenger, if ye do believe in Allah and the Last Day. That is best and most suitable for final determination." (1)

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(1) QURAN AN-NISA (4:59)

iii. **Supremecy of Law.**

The above brings out that the head of the Islamic State is not above law, his function being not to administer the state arbitrarily and at will but positively on the basis of trust and justice as given in the Divine Law, as the following verse establishes :-

"So judge between mankind with truth and follow not caprice and lust of the heart, but it causes thee to err from the path of Allah (i.e. donot subordinate the welfare of the people to thy personal inclinations and interests because that would lead thee away from absolute obedience to the Divine Law and upholding it as supreme)." (1)

However, as long as he administers in conformity with the Guidance given by God and His Messenger (PBUH) he should be implicitly obeyed by all as it has been commanded :-

"Oh ye who believe! obey Allah and obey the Messenger and those charged with authority among you." (2)

7. **Separation of the Exective & Judiciary.**

If as we have noted the head of the Islamic State is subardinate to the Law given by God and His Messenger (PBUH), the principle of the supermacy of law is established. Now the only way to ensure the supermacy of law is the keeping of the judiciary independent of the exective and the total avoidance by the head of the state of tampering with the functioning of the judiciary.

8. **Qualification of State's Functionaries.**

Functionaries of the state are to be appointed on no other consideration but genuine merits like, knowledge, practical wisdom, effeciency, honesty and integrity.

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(1) QURAN "SAD" (38:26)

(2) QURAN AN NISA (4:59)

The Holy Quran says :-

"Verily Allah doth command you to make over Trusts to those to whom they are due " (or to those who are worthy of them).

We have already seen that those in authority hold the state and all that it stands for as a trust from God. All the offices of the state from highest to lowest are thus trusts and one of the implications of the above command, according to orthodox authoritative thought is that which relates to the appointments to governmental services only of persons who are worthy of those jobs.

9. Obedience in people's own interest.

Obedience to the head of the state has been imposed as a duty upon the citizens for :-

a) The coordination of their democratic rights.

b) The establishment and maintenance of collective discipline.

c) The establishment and maintenance of a unitary policy of the state.

These three principles are contained in "enjoining what is right," which is one of the functions of the Islamic State and among other verses, in the following verse which lays down the command :-

"Establish happiness, peace and order among yourselves."(1)

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(1) QURAN AL-ANFAL (8:1)

The Quranic Foundation and STructure of Muslim Society - Fazalur Rehman Ansari, Karachi, Indus Education Foundation Karachi - 1951 - Page 343-359

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S.N. TITLE OF BOOK	AUTHOR'S NAME	PUBLISHER'S NAME	YEAR
1.Administrative Eithics in muslim state.	Shaukat Ali	Publs. united London	1975
2.Analogical reasoning in Islam jurisprudence	Ahmed Hasan	Islamic Research Islamabad.	1986
3.A Book of Quran laws	M.Vali Bhai	M.Ashraf Publ.Lahore	1974
4.The changing World of Islam	Jalbi Jamil	Bureau of Composition U.O. Karachi.	1986
5.Charm of Islam	Aisha Bhawani Wakf	Aisha Bhawani Wakf Karachi.	1958
6.A collection of Islam Law	Gcvt.of Pak.	Printing Corp. of Pakistan.	1980
7.The Concept of Islamic State in Pakistan.	Ishtiaq Ahmed	Vanguard book Lahore.	1991
8.The constitution of Pakistan 1973.	Govt.of Pak.	Govt. Press Karachi.	1973
9.The Constitution of Republic of Pakistan 1962	Govt.of Pak.	Govt.Press Karachi	1962
10.Contribution of Islamic Sociology.	Shah Wali-Ullah	Jamiyat ul Falah Pub. Karachi.	1968
11.Criminal Law in islam	Abdul Qadir	International Islamic Pub. Karachi.	1990
12.Cultural Side of Islam	Pichthall M.Marmaduke	Qadri Book Tradders Lahore.	1984
13.Development of Muslim Theology.	Macdonald Ducan B.	Premier Book House, Lahore.	1972
14.Dimensions of Islam	Afzal Iqbal	Islamic Book Foundation Lahroe.	1987
15.Distribution of Wealth in Islam	M.Shafi Mufti	Aishabawany Wakf Karachi.	1975
16.The doctrine of Ijma in Islam	Ahmed Hasan	Islamic Research Inst. Islamabad.	1986
17.The duties of Brotherhood in Islam(Translation)	Al Gazali	Islamic Foundation Leicester.	1980

18.

Institute

19.Elements of Islamic jurisprodence	Khoja Ali Mohammad.	The Mirror Press Karachi.	1977
20.The Encyclopedia Britanica	---	The Encyclopedia Barit- Inc-Chicago.	1968
21.Ethical Point of view in Islam.	Maududi S. Abdul Ala	Islamic publication Ltd., Lahore.	1967
22.Ettequettes of life in Islam	A.Waheed Khan.	Islamic Publication Lahore.	1970
23.Everyday Fiqa	Kenak A.Aziz	Islamic Book Foundation,Lahore.	1975
24.First step to Muslim Jurisprodence.	Alexander David Russel	Luzae and Co.London	1963
25.Freedom of thought and Islam.	Khan Shafiq Ali.	Royal Book Co.Karachi	1989
26.Fundamental of Islam	Maududi Abdul Ala	Islamic Publication Lahore.	1975
27.Glimpses of Holy Quran	M.Azuzullah	The Time Press Karachi.	1975
28.Glimpses of islam	Agha Khan Sir,sultan Mohd	Sh.Mohd.Ashraf press. Lahore.	1934
29.The Glorious Quran English.	Marmaduke Pickthal	Sindh Sagar Academy Lahore.	1998
30.Hadood Ordinance	Asma Jahangir,	Rohtas Book Lahore.	1990
31.The Hedaya	Hamilton Charles	Javed Riaz Printing Press Lahore.	1982
32.History of Civiliza-tion.	Allen E.A.	General Publishing House Ohio.	1989
33.Holy bible	British Bible Society	British Foreign Bible London.	1951
34.Human Right in Islam	Perveen Shaukat Ali	Aziz Publisher Lahore.	1980

3: Islam.	Baghdadi		
36.Ijma the gate of Ijtehad.	Faruki Kamal	Gate Way Publication Karachi.	1954
37.Insurance and Islam	M.Muslehuddin	islamic Publication Lahore.	1969
38.Intrest Free Banking.	Irshad S.A.	Orient Press of Pak- Lahore.	N.D.
39.An Introduction to Islamic Ideology.	Anwar Hashmi	Karachi Book Centre, Karachi.	1963
40.An Introduction Islamic Ideology.	Anwar hashmi	Tanveer Press Karachi.	1977
41.Introduction of Islamic Law.	Aji Jola A.d.	International Islamic Pub. Karchi.	1981
42.Introduction to Juris-prudence.	Lord lloyd	Steven and sons lahore.	1979
43.Islam	Fazlur Rehman	Anchore Books Newyork	1968
44.Islam In Action	Hashmi Ehsan Ilahi	Hashmi Publication Karachi.	1978
45.Islam a Challenge to Religion.	G.A.Pervaiz	Adara-e-Taluh-e-Islam Lahore.	1978
46.Islam a comprehensive guid Book	Kharie Altaf Ahmed	Idara-e-Sirat Mustaqeem Karachi.	1981
47.Islam at the Crossroads.	M.Asad	Arafat Publication Lahore.	1955
48.islam and destiny of man	Eaton Charles Le. Gai.	Islamic Text Society New York.	1985
49.Islam in Focus	Abul Ala Modudi	The Canadian Islamic Centre, Canada.	1963
50.Islam its Meaning for Modern man.	Khan M. Zafarullah	Routledge and Kegon Paul Pub. London.	1962
51.Islam the Only way.	Inam Mohammad	Inam Mohammad Karachi.	1967
52.Islam on Origin and evolution of life.	Khan Majid Ali Shah	Ashraf Press Lahore.	1978

Title	Author	Publisher	Year
	Niazi	Lahore.	
54. Islam the people and the state.	Zubaida Sami	Reutledge London.	1989
55. Islam the Plight of Modern Man	Nasr Syed Hussin.	Longman publication London.	1975
56. Islam and Theory of interest.	Qureshi Anwar Iqbal.	M.Ashraf Publication Lahore.	1946
57. Islam the religion of all prophets.	Aisha Bhawany Wakf.	Aisha Bhawani Wakf. Karachi.	1959
58. Islam the Straight Path	Esparite John-L	Oxford University Press New York.	1988
59. Islam today andtomorow	Farooqi Kamal	A Islamic Publishing House, Karachi.	1974
60. Islam in Theory & Practice.	Maryam Jameelah	M.Yousuf Khan Press Lahore.	1986.
61. Islam a Universal Religion.	Fazlur Rehman	Kalat Publication Quetta.	1975
62. Islam & the World	M.Asif Kidwai	Sh. Ashraf Press Lahore.	1967
63. Islami Hadood in English.	Hashmi M. Matin.	Anjuman-e-Islah Muslmeen Gujranwala.	1978
64. Islami Nizam-e-Adl. (Report)	Govt. of Pak.	The Council of Islamic Ideo. islamabad.	1980
65. Islami Banking System Principles & Practice.	M.Siddique	Research Institute Islamabad.	1985
66. Islamic Faith & Practice	Manzel Ahsan Muhammad	islamic Foundation Lahore.	1977
67. Islamic Ideology	A.Hakim Khalifa	Inst.of Islamic Culture Lahore.	1988
68. Islamic Jurisprudence	Faruki Kamal Ahmed	National book Foundation Karchi.	1975
69. Islamic Jurisprudence	Khan Mian Rashid	Sh.Ashraf Pub.lahore.	1978
70. Islamic Jurisprudence	Ceoulsan-Neol-J	University of Chicago Press U.S.A.	1974

71.Islamic Jurisprudence in the light of Quran & Sunna. Syed Yaqoob Shah. Feroze Sons Ltd.Lahore. 1971

72.Islamic Jurisprudence in the modern world. Qadri A.Anwar Ashraf Press Lahore. 1963

73.Islamic Law Islahi Amin Hasan Islamic Publication Lahroe. 1979

74.Islamic Meditations. Akram Azam Pak American Commercial Karachi. 1981

75.Islamic Methodology in History. Fazalur Rehman Central Institute of Islamic Reseach Karachi. 1991

75-A.Islamic System of Justice Abdul Qadir International Islamic Publication,Karachi. 1991

76.Islamic view of Women and family. Abdul Rauf Mohd. Robert Spellers & Sons N.York. 1977

77.Islamic way of life. Moududi Syed Abul Ala Islamic Publi.Lahore. 1967

78.Let Us be Muslim in the modern world. Maududi Abu Ala The Islamic foundation Leicester. 1985

79.Man and Islam Ali Shariati. Hasan Filinc Publishers Houston. 1980

80.Militant Islam Jensen G.H. HarperS.Row Publication New York. 1979

81.The Mind Al Quran Builds. Syed A.Latif. Idara-e-Adabiyat Dehli 1977

82.Modern trend in Islam Gibb,H.A.R. Octagon Books N.Y. 1947

83.Moral and Manners in Islam. Al-Kayasi Marwan Ibrahim Islamic Foundation Leicester. 1986

84.Mulla Principles of Mohammadan Law M.Hadayatullah Islamic Publi. Karachi. 1961

85.Muslim Jurisprudence & the Quranic Law of Crimes Waliullah Mir Islamic Book Service Lahore. 1982

86.Origin of Islamic Jurisprudence Guraya M.Yousuf Sh.M.Ashraf Pub. Lahroe. 1985

87.Outlines of Muhammadon Law. Fyzee Asif A.A. Oxford University Press, Delhi. 1974

88.Pakistan Law (Islamic Law). — Hamid Ali — The Ideal Publishers, Karachi. — 1982

89.The Penal Law of Islam — Siddiqui M. Iqbal. — Kazi Pub. Lahore. — 1985

90.The Philosophy of Islamic Law & the Orientalists. — M.Muslehuddin. — Islamic Publ. Karachi. — 1977

91.The Philosphy of Law in Historical perspective — Car Jea Chim Friedrich. — University of Chicago press U.S.A. — 1984

92.Principles of Mohammadan Law. — Mulla Danish Firdunji. — Thackers Publication Bombay. — 1905

93.Principles of state and Govt. in Islam — Asad Mohd. — University of California Berdelay. — 1990

94.Quran & its impact on human History. — Brohi Ali Bakhsh. — The Islamic Foundation Leicester. — 1981

95.Quran the Fundamental Law. — S.Anwar Ali — Hamdard Foundation Karachi. — 1987

96.The Quran Foundation & Structre of Muslim Society — M.Fazalur Rehman Ansari — Indus Education Found Karachi. — 1951

97.Quran Majeed — Moulana Mehmud-Ul-Hasan — Sh.GhulamAli & Sons Lahore. — 1957

97-A.Quran Majeed — Moulvi Sana-Ullah — Snai Academy, Lahore. — 1978

98.Quran concept of War — Malik S.M. — Wajid Ali Public. Lahore. — 1979

99.Reflection of Islam. in the modern world. — Hamoodur Rehman — Islamic Book Foundat. Lahore. — 1983

100.Religious duties of Islam. — Effendi Abu Baker.E.. — Bill Pub.Netherland — 1960

101.The Rights of Women in Islam. — Ali Asghar — Sterling Pub.N.Dehli. — 1992

102.Schacht's Origin of Modern Jurisprudence. — M.Mustafa Al-Azami. — John wiley & sons N.Y. — 1985

103.Science d& Civilization in islam. — Nasr Sayed Hussain. — Hamdard University Press Karachi. — 1968

104.Shariah & legal Profession. — Haider S.M. — Feroze sons Ltd.Lahore — 1985

105.A short hand book of Fiqa — Al-Badayuni T.Buy — Noor Pub.House Dehli. — 1985

106.A.Social Laws of Quran	Robert Robeters	Sange-e-Meel Pub. Lahroe.	1978
107.Source of Islamic Law	Burton & John	University Press Edenburg.	1990
108.The Spirit of Islam	Asad Mohammad	The Islamic Foundat. Liecester.	1984
109.Splandours of Islam	Blunt Wilfrid.	August & Robertson sons Lahore.	1976
110.The Sstruggle for Pakistan.	I.H.Qureshi	Fazlee sons lts. Karachi.	1987
111.Studies in early Muslim	Carlder Noman.	Clarendon Press Oxfored	1983
112.Studies in Islamic Law Religion & Society.	Bhatia S.H.	Deep & Deep Pub. New Dehli.	1989
113.Studies in Muslim Law	Siddiqui NUA	Iqbaluddin Pub.Decca	1955
114.Al-Suban-an-Noor	M.Hanif	Al-Maktaba ul Ashrafia Lahore.	1977
115.Towards Islamic Renai-ssance	Israr-ul-Haq	Feroz Sons Ltd. Lahore.	1987
116.Towards Understanding Islam.	Maududi Abul Ala.	Idara-e-Tarjman ul Quran, Lahore.	1974
117.A.Text book on Muslim Law.	Pearl David	Crown Hem Pub. London.	1987
118.Theories of Islamic Civilization.	William John Elden.	Burklay University California.	1971
119.Usul-ul-Fiqa al Islamia	International Inst.of Islamic Thought.	Intent Institute London.	1935
120.War and Peace in Law of Islam.	Majed Khuddari	James Hopkin Press Balti-More.	1935
121.The way of Islam	Dobison M.H.I.	World Federation Loneon..	1983
122.West Tributes to Islam	Shah Syed Yaqub	Feroze Sons,Lahore.	1971
123.Women in Islam.	Dr.M.Akhtar-Saeed.	Islamic Research Academy,Lahore.	1983
124.An Introduction to Islamic Ideology.	Anwar Hashmi	Tanveer Press Karachi.	1977

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۳۷	راہ و منزل	قدیر الدین احمد	ایس الطاف علی پبلشرز۔ لاہور	۱۹۷۷
۳۸	صحیح بخاری شریعت	ابو عبداللہ محمد بن اسماعیل بخاری	مکتبہ تعمیر انسانیت لاہور	۱۹۷۷
۳۹	صراط مستقیم	عبدالقیوم ناطق	طاہر سنز پرنٹرز کراچی	۱۹۸۲
۴۰	تفہیم القرآن	مولانا ابوالاعلی مودودی	مکتبہ تعمیر انسانیت لاہور	۱۹۴۹
۱۴	تفسیر القرآن	مولوی عبداللہ آمین	پنجاب پریس سیالکوٹ	۱۸۹۹
۲۴	تفسیر ابن کثیر	علامہ ابن کثیر	نور محمد کارخانہ کتب کراچی	۱۹۵۱
۳۴	تفسیر قادری	مولوی فخر الدین	نول کشور پرنٹنگ پریس لکھنو	۱۹۰۰
۴۴	تقسیم مراث	ایس شوکت علی	اسلامک پبلیشرز لاہور	۱۹۸۶
۵۴	ترجمان القرآن	مولانا ابوالکلام آزاد	ادارہ ترجمان القرآن لاہور	۱۹۶۲
۴۶	تعزیرات اسلام	مولانا بشیر احمد	سندھ آف سیٹ پرنٹنگ کراچی	۱۹۸۱